

# **CIVIL DISOBEDIENCE**

## **A PHILOSOPHICAL STUDY**

A Thesis Submitted  
In Partial Fulfilment of the Requirements  
for the Degree of  
DOCTOR OF PHILOSOPHY

By  
RAGHAVENDRA DEV DIXIT

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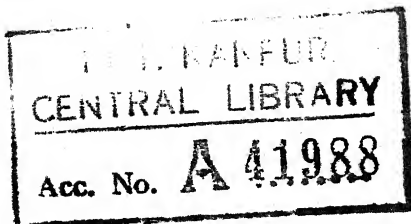
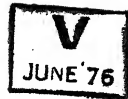
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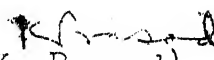


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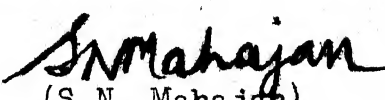
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## SYNOPSIS

This study is an endeavour to develop a framework and perspective rendered by philosophical analysis for the interpretation and evaluation of the phenomenon of civil disobedience. The study concentrates on civil disobedience as a method of political protest. It is toward the understanding of this problem that this dissertation is directed. In it an attempt is made to present a philosophical analysis of the conception of civil disobedience in Socrates, John Locke, Henry Thoreau and M.K. Gandhi, and then a definite perspective is formed.

While we concentrate on the problem of political obedience the other equally important problem, namely, that of political disobedience automatically comes into picture, though the latter did not get much philosophical popularity in the hands of political philosophers. However, no theory of political obligation can be complete unless it gives considerable attention to the other equally

important and related issue concerning political disobedience. That is why neither of the two can be treated in isolation from the other. All talk about political obligation or political disobedience makes sense only when there is a political society which consists of individual citizens. The relation of the individual citizen to the laws of the state is not a simple one. The issue gets even more complicated when the individual citizen like Socrates and Gandhi refuses to obey the demands of law for moral reasons.

Apology and Crito provide us with an excellent framework in which the issue of disobedience is raised. Socrates being a conscientious citizen does not want to take society and laws governing it lightly. He recognises the value of social living by endorsing the significancies of social and political obligations, but at the same time he feels the call of duty which emanates from 'voice of God' for him. This he considers to be higher than the laws of the state. Here we can assume a distinction between 'higher' and 'lower' values. The former type of values emanate from

Conscience, from Reason or from a conception of trans-legal justice; whereas the latter type of values owe their origin to the institution of a political society. The existence of the latter is a necessity for the actualisation of the former. A careful study of Apology and Crito reveals that Socrates neglects neither. We find him preserving his higher values by disobedience of law. However, to meet the demands of law he accepts willingly the punishment for his acts of disobedience. Mr. Rex Martin interprets him to be an advocate of unconditional obedience to Laws but on a thorough examination this is found to be a mistaken interpretation.

John Locke's political theory is contained in his Two Treatises of Government and in his Letters Concerning Toleration. The first is a refutation of 'False Principles' contained in Robert Filmer's Patriarcha. The second gives the positive side of his political thought. According to Locke, government is established for the achievement of certain values or ends. When it fails partially or totally in the fulfilment of these values or ends individuals have an opportunity for civil disobedience or revolution.

The former is likely to take place when the governmental system in general is fair and good but some individual(s) finds (find) some law(s) offending his (their) liberties. A revolution is likely to take place when the existing government becomes wicked en masse.

Henry Thoreau refuses to pay his poll-tax because the trouble with paying this tax was that it expressed allegiance to an unjust government and helped to support, however slightly and indirectly, the practice of warfare and slavery. Though Thoreau was not against all taxation but he considered it to be something wrong in principle to pay the poll-tax. The issue whether civil disobedient could be an anarchist is also dealt with in this context.

M.K. Gandhi considers 'civil disobedience' to be a branch of 'satyagraha' which he considers to be a pursuit of Truth through non-violent means. To give a clear and coherent picture of this issue, he distinguishes it from other concepts like, 'passive resistance' and 'duragraha'. All cases of satyagraha according to him are not cases of civil disobedience. However, disastrous consequences follow



if we like S. Panter-Brick overlook this distinction.

Based on these analyses civil disobedience is viewed as an illegal, open, non-violent and conscientious act committed to redress unjust law or policy of government.

What is the justification for such acts? A distinction between 'justifiability' and 'justification' is required to be made. The former is a presupposition for the latter. 'Divine obedience' or 'obedience to higher law' is viewed as the supreme ground which urges humble disobedience of empirical law. Whenever there appears a conflict between 'divine obligation' and 'empirical obligation' the former overtakes the latter. However, if 'justice' and 'legality' are taken to be identical there will then be nothing like civil disobedience. Other goods like public good, humanity count as secondary justifications. In this context, some regulative principles of justification are also given. Civil disobedience is further justified by an exploration of its relationship with Law and Order. It is proposed that the type of civil disobedience as outlined in this work never aims at bringing about chaos in society and cherishes no disregard for LAW.

## INTRODUCTION

Civil disobedience raises many problems of interest to social and political philosophers. In raising the question of disobedience to the legally enacted laws, the practiser of civil disobedience raises issues which are at the very heart of the problem of limits of political obligation. A thorough examination of the questions leads us to a consideration of the very grounds of political obligation. Is the relationship between the individual and the state, for example, such that an individual is obliged to give his unconditional obedience to all the laws of the state? If one were to accept the 'contractual' nature of the state, would such consequences follow? What is the import of the considerations of 'fairness' on this question? Apart from purely legalistic stand, considerations from morality and 'good citizenship' further vex the issue. Is a good citizen, for example, exemplified by a person who offers unquestioning obedience to all state laws? Or is it perhaps the vigilant, critical, dissenting individual who renders to the state service worthy of a truly loyal citizen?

The relation of the individual to the laws of a political society is a complex one and the issue gets even more complicated when a thinking, morality-abiding, conscientious individual, such as Socrates and Gandhi, refuses to meet the demands of law for moral reasons. The source of such a disobedience is his adherence to norms and values which the individual holds other than state-values. What is the status of obligation to the state when there is a conflict with these higher values? In other words, what is to be done when higher and lower values come into conflict? Should the individual as a conscientious citizen follow one and reject the other? Or should he somehow attempt a reconciliation between the two?

Then there are the problems which centre round the very concept of civil disobedience. There are problems which arise in giving a determinate meaning to this concept and defining its logical boundary. Where does it fall? How is it related to 'rebellion', 'revolution', 'satyagraha' etc.? Is 'revolutionary civil disobedience' a meaningful concept? What is in the aim and method of civil disobedience and revolution which sets them apart as distinct concepts? Can civil disobedience be legal? Acceptance of penalty seems a generally accepted feature of civil disobedience and

the conspicuous practisers of civil disobedience themselves insist on it. Why is it so? We need to understand civil disobedience in such a way that it makes it intelligible: the distinction as well as such features as acceptance of penalty.

There is a lot of confusion about the nature of means, that civil disobedient adopts. Some following M.K. Gandhi and Martin Luther King insist on non-violence as an essential feature of it, whereas others hold that it will be a mistake to do so. Some reject the adoption of non-violence on the basis that no clear distinction between 'violence' and 'non-violence' exists. It is the concern of a philosopher to attempt a systematic analysis and clarification of such issues.

Then there are questions of 'justifiability'. Here we must keep apart the distinction between 'justifiability' and 'justification'. It is obvious that 'justifiability' precedes 'justification'. In other words, no questions concerning 'justification' can adequately be resolved unless we first establish the 'justifiability' of civil disobedience. Again, whereas some have talked of a right to civil disobedience, others have held the other extreme position that civil disobedience is never justified as no cases of civil disobedience are ever justifiable. The advocates of

the latter view hold that it can never be compatible with political obligation as obedience is part of the meaning of the concept of law. If it is held that 'justice' is exhausted in 'legality' then there can be no unjust law and as civil disobedience is done to redress an unjust law, on these lines the very possibility of civil disobedience is seen not to exist. Similarly, if laws are considered to exhaust the entire morality then there will be no immoral law. If this is true then there can be no civil disobedience on the grounds of changing an immoral law. Obviously, there is a need to discuss these questions in detail.

On the other hand, the philosophers who consider civil disobedience to be justifiable seem to be confused and uncertain when it comes to giving the central principles of such justification. A lot of criticism has also arisen from the alleged belief that civil disobedience conflicts with law and order in that it leads to disrespect of law and eventually to lawlessness and anarchy. Thus though they would consider it justifiable, yet because of the belief that civil disobedience leads to such consequences, they would reject it as an appropriate means of protest.

The issue of political disobedience is as old as political theory itself. Plato was concerned

with this in the Apology and Crito. As counterpart of obligation we find it discussed by John Locke in Two Treatises of Government. In contemporary times, Thoreau discussed it in the "On the Relation of the Individual to the State", which later came to be known as "Civil Disobedience". Recently, the writings of Gandhi provide us with an ample material for an understanding of the theory and practice of civil disobedience. To completely disregard such thinkers will only deprive us of their valuable insights. We shall therefore devote part of our dissertation to a critical study of the theory and practice of civil disobedience as we find it in the writings of Plato, Locke, Thoreau and Gandhi. In the rest of the thesis we hope to be able to clarify the outstanding philosophical issues centring round civil disobedience as outlined above. We hope that in the end will emerge a clear, coherent and intelligible picture of the concept of civil disobedience, its justifiability, the main principles of justification and its relationship to law and order.

## CHAPTER. I

### THE APOLOGY AND CRITO CONCEPTION

#### OF

### CIVIL DISOBEDIENCE

Apology and Crito provide us with an excellent framework in which the issue of disobedience is raised. Socrates is a conscientious citizen and as such he does not want to take society and laws governing it lightly. Indubitably, he recognises the value of social living, but at the same time he cannot ignore the dictates of his conscience, which to him is the seat of Divine Command and as such the source of duty, morality, and **justice** for him. The dictates of conscience have a higher validity for him. Even his general habit of obedience to the laws is itself in conformity to his conscience. But if what the state laws command were to come in conflict with the demands of Conscience, it is clear that it is not the former which would have the claim to supremacy but the latter. It is more of a rule rather than exception that most men cherish some values, which are put on a higher level by them than

their obligation to the laws of the state. In addition to Conscience, some other sources of the former type of values have been: Morality, Reason, Justice ~~or~~ Voice of God. For the sake of convenience we may denote this set of values by 'HV' (Higher values). On the contrary, there are some values such as social stability and law and order, which an individual cherishes because of his being a member of a political society. These values are necessary for the fulfilment of his basic needs. Only the achievement of these values makes good living possible. The political society is instituted for the realisation of these values and to accomplish this purpose it works within a legal structure. If it is to work and yield the benefits which the individual citizens expect from it, then they must obey the laws of the state, because if they refuse to obey the laws of the state, the very purpose of the existence of a political society is defeated. We can denote this set of values by 'SV' (state-values). Since the individual as a citizen enjoys certain benefits and privileges in political society, he has some obligations towards the society of which he is a member. As a citizen, if an individual breaks the law, he is required to undergo certain designated penalties. A man who says: 'I do not obey the law nor do I accept the punishment'



shows highly anarchistic tendencies implying subversion of law, which if wide-spread would ultimately ruin the the state. That however is a consequence which most reasonable men would wish to avoid. For one thing, even the values designated as 'higher' by men are achievable only in a non-anarchic state, that is, in a society which has organised itself into a state of some law and order. If there are anarchy, social disorder, constant fear of death and lack of security, the realisation of 'HV' would be highly doubtful or even impossible. However, our concept of good or noble living includes a reference to higher values so that it will not be enough to remain satisfied only with the actualisation of 'SV'. For existence which we consider human as contrasted to mere animal existence, the 'HV' are also needed. The fulfilment of 'SV' meets the material needs of men whereas the realisation of 'HV' fulfils their spiritual/moral needs.

Considering the importance of both, in case there appears a conflict between the 'HV' and 'SV', the individual may find himself in a difficult decision-making situation. If he opts for the former, he finds that this amounts to taking the ground off from under his feet. Besides, choosing 'HV' and sacrificing 'SV' may not even be a clear case of choosing morality over

survival for there is the moral worry that as he has been enjoying the benefits of the political society, it would be far from fair for him to altogether neglect the social-political obligations, which thus accrues to him. It seems he must find some way of reconciling the two conflicting claims.

Looking at Apology and Crito we see this is the kind of dilemma which Socrates faces. What is his situation? If we leave aside Crito for the time being and concentrate on Apology, it seems as if Socrates opts for 'HV' and altogether neglects the 'SV'. For example, he says:... I care not a straw for death, and that my great and only care is lest I should do an unrighteous or unholy thing."<sup>1</sup> This clearly shows his willingness to sacrifice his life, if necessary, for the sake of 'HV'. To him pleading for life is unthinkable, as he says:

...if now, when, as I conceive and imagine, God orders me to fulfil the philosopher's mission of searching into myself and other men, I were to desert my post through fear of death, or any other fear; that would indeed be strange...etc.<sup>2</sup>

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1. See Jowett, B. (Ed.): The Dialogues of Plato, Oxford, 1964, V. I, Apology, p. 357.
  2. Ibid., p. 353.

and further, addressing Athenians, he says:

... Men of Athens, I honour and love you; but I shall obey God rather than you, and while I have life and strength I shall never cease from the practice and teaching of philosophy ...etc.<sup>3</sup>

From these lines it could seemingly be concluded that whenever there is such a conflict, he will only follow the voice of God or the dictates of justice but this will prove to be a misleading interpretation as we proceed.<sup>4</sup>

Crito gives an entirely different impression of Socratic position. Here Socrates gives so many arguments for the state and its laws that one may be led to believe that he holds 'SV' to be supreme, that is, he will obey the Laws even if it means sacrificing his higher ideals. One thing is clear at the outset that even if Socrates is to be interpreted as holding this position, it can not be on the basis of his fear of punishment. This is made abundantly clear by him in both Apology and Crito. Indeed this position is presented by Crito, his friend, in prison. There Socrates refuses the escape-offer. In this context, he

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3. Ibid., p. 354; also Crito, pp. 372,374.

4. Even in the quotation given above there is the reference "I honour and love you". It is a clue to the fact that he is not only worried about his morals but also cherishes a certain sense of manhood and citizenship which he cannot afford to neglect altogether.

reminds Crito of the benefits that he has enjoyed from the state as a citizen and points out his obligations towards it. While convincing Crito about the position taken by him, he talks about his agreement with the Laws, the education which the state gave him, and the parental care which it also rendered. These arguments may be erroneously interpreted to conclude that Socrates was an absolutist advocating unconditional obedience to the state. But a careful scrutiny of facts reveals that such an interpretation is inconsistent with Socrates' theory and practice.

In our view, Socrates rejected both these positions outlined above. The position which seems to form the basis for Socrates' conduct is one which reconciles the two conflicting claims from the realms of 'HV' and 'SV'. His unique resolution of this conflict follows this pattern. As his obligation to the higher values requires a violation of the state-law, he disobeys the law(s) and does what he considers to be just, in accordance with Conscience and what he considers to be God's voice. However, the obligations which he has as a beneficiary of the political order and as a citizen, are met by him by his willing acceptance of the punishment that the breach of laws brings as a consequence. In this way he preserves both kinds of

values. In Apology we find the disobedience-aspect, whereas in Crito, the other aspect, that is, acceptance of punishment is brought to focus.

Either of these two positions may be interpreted to be the Socratic position. Mr. Rex Martin interprets him to be a champion of absolute obedience. To quote:

I hope to examine arguments given in Crito and to show that these arguments are unambiguously directed against disobedience to law. The arguments advance reasons for obedience to law or rather against disobedience.<sup>5</sup>

This interpretation of Socrates' position may be based on the notions of (a) parenthood and (b) agreement, as presented in Apology and Crito.

(a) In Crito, Socrates imagines the situation in which he is about to run away. The Laws appear before him and remind him of the parental care which they took of him:

Well then, since you were brought into the world and nurtured and educated by us, can you deny in the first place that you are our child...<sup>6</sup>

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5. Martin, Rex: "Socrates on Disobedience to Law", ROM., Sept. 1970, pp. 18-20.
  6. Jowett, p. 380.

Socrates was aware of the fact that he as a citizen had received many benefits from the state and as the state nurtured him, he was having certain obligations towards it. He further knows that his escape would involve a neglect of these obligations. If he escapes he would be destroying the Laws, as they themselves point out: "Tell us, Socrates, what are you about? are you not going by an act of yours to bring us to ruin-the laws, and the whole state, as far as in you lies?"<sup>7</sup> They further remark:

Tell us, -What complaint have you to make against us which justifies you in attempting to ruin us and the state?<sup>8</sup>

Here it is pertinent to point out that destruction of laws is considered to be the consequence of Socrates' running away from prison. Socrates does not intend to destroy laws as they are his 'parents'. He fulfils his obligation towards them by not escaping, that is, by accepting the punishment and remaining in prison. As Laws are his 'parents' he will not choose to destroy them by his escape. If Socrates dishonours the judicial decision by his escape and does not accept the punishment, the law is harmed. Laws are made to

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7. *ibid.*, p. 379.

8. *ibid.*

say: "Do you imagine that a state can subsist and not be overthrown, in which the decisions of law have no force, but are set aside and trampled upon by individuals?"<sup>9</sup> A rhetorician will have a great deal to say in favour of the execution of a sentence in violation of a law. That laws are deemed by Socrates as his parents, from this it could mistakenly be concluded that he is bound to obey them unconditionally, whereas the fact is that all talk between Socrates and the Laws is centred round his escape and no mention of obeying or disobeying is made. The Laws are made to say that if Socrates escapes, it would mean that he "pay(s) no respect to us the laws, of whom you are the destroyer...running away and turning your back upon the compacts and agreements of your citizenship which you made with us."<sup>10</sup>

(b) The second argument concerns the notion of 'agreement'. Here we want to point out that Socrates never had an agreement to obey all laws unconditionally, nor any moral man can have such an agreement to obey all laws just or unjust. We wish to proceed by refuting Mr. Martin's interpretation of Socratic position.

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9. *ibid.*

10. *ibid.*, p. 382.

He takes the arguments given in Crito "to be unambiguously directed against disobedience to law."<sup>11</sup> Indeed, Mr. Martin bases Socratic advocacy of unconditional obedience on a wrong conception of 'agreement'. What in these circumstances is required is a thorough analysis of 'agreement'.

In Crito the Laws say: "And was that our agreement with you? Or were you to abide by the sentence of the state."<sup>12</sup> It is clear from the context that here 'that' refers to the fact of his escape. The question is whether it was Socrates' agreement with Laws that he would escape punishment if he got it. Clearly, it was not the agreement that he would run away from the punishment that the state pronounced against him, and this is the reason he chooses to stay inside the jail, in spite of being persistently requested by his friend Crito. At every step, we have to keep in mind the context of his escape and the subsequent dialogue with the Laws of Athens, otherwise, we are very likely to be misled. In this context, the Laws clearly say, "Or were you to abide by the sentence of the state?" They repeatedly allude

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11. as foot-note 5.

12. Jowett, p. 379.



to this fact that by your escape,

You, Socrates, are breaking the covenants and agreements which you made with us...And not you refuse to abide by your agreements.<sup>13</sup>

If the escape breaks the agreement then non-escape keeps the agreement of Socrates with Laws. What could then be the nature of such an 'agreement'? The only sane agreement which we make with laws is: Either we obey the law(s) or accept the designated punishment in case of disobedience. The Laws frequently remark this, "Or were you to abide by the sentence of the state?" The 'agreement' then was 'not to run away from the punishment' once it was given. Thus the 'agreement' of Socrates or of any moral individual to the laws of the state is not that of unconditional obedience, as Mr. Martin takes it to be: "...to obey all laws regardless of the fact whether they are just or unjust."<sup>14</sup> In other words, 'agreement with laws' does not mean that it is an agreement to obey this or that, good or bad, right or wrong, just or unjust or all laws, but it is only a general acceptance and allegiance towards the legal system as a whole. For instance, if we accept and owe allegiance to Indian legal system, then we are not

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13. *ibid.*, p. 382.

14. as foot-note 5.

bound to accept the laws which are discriminatory, as obedience to each and every law is not a part of such an 'agreement'. It is only a general sort of agreement and as a general view of something does not concentrate on any particular, similarly, such agreement in general does not concentrate on this or that particular case of obedience.

Mr. Martin's conception of Socratic 'agreement' with laws would imply unconditional obedience to tyrannies, dictatorships and to the whims of the tyrants, which Socrates as a man of reason, as a follower of conscience, as a listener of God's voice and as a doer of only right will never grant. In other words, not only Socrates, but no moral man can accede to any agreements which require blind obedience. However, if Socrates made an agreement for unconditional obedience then his disobedience becomes incompatible with this sort of agreement. If the 'agreement' were of the unconditional type then by breaking the law but accepting to remain in prison, Socrates could not argue that he was keeping his agreement. Because clearly unconditional obedience demands that the individual may not break the law at all. The Laws allude to this fact frequently that the agreement would be broken if Socrates managed to

escape.<sup>15</sup> Whereas the agreement for unconditional obedience is broken regardless of the fact whether he runs away from prison or stays inside. Thus only if we interpret Socrates' agreement with Laws in the way we have suggested above, viz., to obey the laws or accept the punishment, can we do justice to the Socrates' position.

A careful study of Apology and Crito reveals that Socrates does only that which his Conscience guides him to do. Obedience to the command of God is for him a necessity. Socrates regarded it to be the command of God that he is to cross-examine people. He followed it by doing the same. In this path even the fear of death could not hinder his pursuit. He says to Athenians: "Either acquit me or not, but whichever you do, understand that I shall never alter my ways, not even if I have to die many times." Still further he remarks, "...that to no man should I ever wrongly yield from fear of death..."<sup>16</sup> This is tantamount to saying that no matter what, he would not disobey God. This loyalty to his conscience which revealed to him the Will of God led him many times to disobey the Athenian Law. Once Socrates refused to

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15. as foot-note 13.

16. Jowett, pp. 355-57.

obey the 30 tyrants. As is well-known, in the year 400 B.C., the Athenian democracy was destroyed and an oligarchy of 30 set up in its place by Critias with the help of the Spartan General Lysander. It was the reign of terror and injustice. The Generals sent for Socrates along with four others and commanded them to bring Leon from Salamis to Athens for being murdered. The four feared to disobey the command; disobedience to which probably meant death. Socrates boldly disobeyed the command and went home saying: "...I care not a straw for death, and that my great and only care is lest I should do an unrighteous or unholy thing."<sup>17</sup> It is not the political authority that he fears no disobedience which may bring death to him, his only concern is that he should not be doing anything that is unrighteous and unholy. In the context of adhering to state religion, Socrates further disobeyed the laws and what is more, acknowledged it in unambiguous words. The charge against him ran: "...Socrates is a doer of evil...and does not receive the gods whom the state receives, but has a new religion of his own."<sup>18</sup> In Athens of Socrates' time, Apollo and Zeus and other such gods were regarded as the

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17. *ibid.*, p. 357.

18. *ibid.*, p. 348.

'state-gods'. Though Socrates was a religious man, yet his conception of God was quite different. Thus although he believed in divinity, he did not believe in the 'state-divinities' as he himself says, "...only you say that they are not the same gods, which the city recognizes- the charge is that they are different gods."<sup>19</sup> Meletus swears by Zeus<sup>20</sup> which is different from the gods Socrates believed in. He believed that his gods are higher than the 'state-gods' as he puts it: "...I do believe that there are gods, and in a sense higher than that in which any of my accusers believe in them."<sup>21</sup> Thus staying true to his own conception of 'gods' Socrates committed disobedience to the laws concerning state gods. It is clear from the instances cited above that the force of Socrates' argument in Apology and Crito is directed not against disobedience but against escaping from the punishment. Punishment may be accepted in various ways. Somebody may stay inside the jail and yet he may really not accept the punishment. This unacceptance of punishment may be witnessed in his behaviour. For example, he may sit for a fast-unto-death in gaol showing that injustice was done in his case and that he has not

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19. *ibid.*, p. 351.

20. *ibid.*

21. *ibid.*, p. 360.

accepted the punishment morally though physically he is in prison. Socrates' acceptance of punishment was both moral as well as physical. In no way did he interfere with attempts to put him into prison, when given the opportunity to escape, he refused, and finally without making any fuss about it readily drank the hemlock.

Wondering at Socrates' calm acceptance, Crito remarks:

I wish I were not myself so sleepless and full of sorrow. I have been watching with amazement your slumbers...never did I see anything like the easy, tranquil manner in which you bear this calamity.<sup>22</sup>

Without a trace of rancour for his fellow-citizens whom he loved and for whose own good he carried on his relentless inquiry and who now ironically were bent on taking his life, Socrates accepted the harsh punishment and calmly waited for the approaching death

To follow one's conscience, to disobey laws which are considered unjust rather than give blind obedience to all laws, to accept calmly penalties which go with such a disobedience, to desist from harming others, these then are the features in the civil disobedience of this man of rare honesty and integrity to which our attention is drawn.

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22. *ibid.*, p. 371.

## CHAPTER II

JOHN LOCKE'S

### CONCEPTION OF CIVIL DISOBEDIENCE

Locke's political theory is contained in his Two Treatises of Government and in his Letters Concerning Toleration-the latter being his ideas on religious liberty. The first is a refutation of the 'false principles' contained in Robert Filmer's Patriarcha, in which the divine right of absolute monarchy is based on hereditary descent from Adam. It is an attack against the absolutism of Filmer and Hobbes as both agree that power must be absolute, but whereas Hobbes finds the origin of the government in 'contract', Filmer derives the title of Charles I from Adam. On this view, Adam had received from God at the time of creation absolute dominion over Eve and all his children and their posterity. The second Treatise which gives the positive side of Locke's political thought begins with an account of the state of nature from which the commonwealth springs. The state of nature in Locke is not a state of anarchy. How does then political obligation

come into being? What are its limits?

The political philosopher imagines life, as it would be outside political society, as a useful device. Indeed here lies the value of the conception of the state of nature. Whether the state of nature is a historical fact is not of much relevance but the question is: What kind of life men would live in the state of nature? For a clear grasp of the matter it would be useful to compare Hobbessian and Lockian conceptions of the state of nature. Hobbes proposes that by nature men are more or less equal<sup>1</sup> in their capacities. Everyone feels he can do as well as anybody else can do the same thing. But there is a lot of competition. Related with this feeling, is the feeling of diffidence and insecurity. As all are more less equal, all strive by physical force or cleverness to get rid of this feeling of insecurity. Thus everyone becomes enemy to everyone else. In such a state, there is no stability, no security, no peace, no culture and no art. In other words, all good things of life are absent. It could unquestionably be said that everyone wants some degree of security and peace. This sort of life, that is, life

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1. See Molesworth, W. (Edr.): The English Works of Thomas Hobbes, Scientia Verlag Aalen, Germany, 1966, V. III, Chapter 13, pp. 110-16.



in the state of nature is 'solitary, poor, nasty, brutish, and short'.<sup>2</sup>

In this state of nature each man has a natural right to act in a way to preserve his own life. To have a natural right means that it is inalienable, that is, that it cannot be taken away from the possessor in any circumstances. In other words, one has an obligation to oneself to respect one's own natural right and thus not to do anything which is destructive of his life, and liberty. However, the interests of men as a self-preserving being are best served by avoiding the state of nature. Security, self-preservation, protection from internal chaos and jeopardy, are then the benefits attainable by the institution of a political society.

Locke's account of the state of nature resembles that of Hobbes' but there are significant differences also. Locke, like Hobbes, also believes that in the state of nature men are equal and have full freedom to dispose of their possessions. It is not a state of utter chaos and is unlike Hobbessian state of nature. What then is the need for a government if men are peacefully and amicably living together in the state of nature? If it is not a state of anarchy, as Locke

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2. *ibid.*, p. 113.

believes then how is the order maintained? Locke's answer is: that in the state of nature peace is kept by following the law of nature which ordains that "no one ought to harm another in his life, health, liberty or possessions."<sup>3</sup>

Though men have such a law, it is not necessary that they will always follow its dictates. There are 'wicked men' in every society who do not follow laws being dominated by their passions and appetites. They bring about chaos in the peaceful living of the other individuals. This upsets the peaceful living in the state of nature and leads to discomfort, discontentment and mutual tussle. Again whosoever violates the law of nature and thus endangers the life, liberty and property of others, deserves punishment. But can everyone be a judge for himself? Though in the state of nature men have great liberty, their full enjoyment is in constant danger of infringement by others. Hence, discomforts, violations and inconveniences may emanate in the state of nature as the law of nature may not be adequately effective. To get rid of all these men must form a political society, by limiting their respective freedoms.

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3. See Gough, J.W. (Edr.): The Second Treatise of Government and A letter Concerning Toleration, Barnes and Noble, 1966, II/6.

This men do by giving their consent, as Locke puts it:

MEN being, as has been said, by nature all free, equal, and independent, no one can be put out of this estate, and subjected to the political power of another, without his own consent. The only way ... is by agreeing with other men to join and unite into a community for their comfortable, safe and peaceable living...<sup>4</sup>

The commonwealth seems to be a society of men constituted only for the procuring, preserving and advancing their own civil interests, which are as follow: "Civil interest I call life, liberty, health and indolency of body; and the possession of outward things, such as money, lands, houses, furniture, and the like."<sup>5</sup> Thus the governor gets its authority from the governed and rules and acts as judge by standing rules which are supposed to be fair and non-discriminating. Hence, the authority is justified in terms of the goods that it helps to realise. Men have an obligation to the ruler so long as the latter keeps his trust. Whereas Hobbes prefers an absolute government,

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4. Gough, II/95.

5. *ibid.*, Letter, p. 128.

Cf. "The public good is the rule and measure of all law-making. If a thing be not useful to the commonwealth, though it be never so indifferent, it may not... be established by law.", p. 145; and further, "Political power, then, I take to be a right of making laws with penalties of death...and of employing the force of the community in the execution of such laws, and in the defence of the commonwealth from foreign injury; and all this only for the public good.", *ibid.*, II/3.

Locke seems to be well aware of the inherent deficiencies of the unlimited powers of a king. A government cannot be allowed to have absolute arbitrary power over the people. This power is limited to the public good. An absolute government is not consistent with the law of nature and with men's natural rights. For this leaves no room for protection against tyranny over the subject by the rulers. From the fact that government is established for certain ends fulfilment of which alone justifies the authority accorded to it, it follows that when the government does act contrary to the realisation of such ends, it loses the trust of the people and they have in such a case a right to remove or alter it. Thus the government has authority only in so far as it is based on the consent of the governed, whereas the latter have an obligation only because they give their consent to the rule of the government. Locke talks of 'express' and 'tacit' consent, as there are bound to be situations in which an unanimous consent is not available. Locke holds that it is the consent of the majority<sup>6</sup>, which should be the deciding factor. That it is the consent of each and every individual is an impossibility. However, if it is the consent of the majority, do the

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6. Treatise, II/95, 96, 97 and 200.

minority who dissented still have the obligation to obey the government?

When people set upon themselves the task of making a government to whom they will owe political obligation, it is implied that they have this prior agreement or understanding, implicit if not explicit, that the will of the majority will be binding on all. However, if there is no such understanding, no government could ever be formed. The argument of a person 'p' who says that since his candidate 'c' for whom he gave his consent is defeated, he has no obligation to the state, would not be valid, for in consenting to vote, he can be interpreted to have already accepted the arrangement in which such a possibility may arise. As Locke puts it:

...every man, by consenting with others to make one body politic under one government, puts himself under an obligation to every one of that society, to submit to the determination of the majority, and to be concluded by it...<sup>7</sup>

We can always make a distinction between consenting for the making of a government and consenting for some particular sort of government. The latter definitely presupposes the former, as it would be absurd to say that we consent to make a particular government

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7. Treatise, II/97.

but do not consent to make a government. J.P.Plamenatz clearly puts it:

When you vote for a person or party that wins an election you directly consent to him or their authority and you also consent indirectly to the system of the government.<sup>8</sup>

As we mentioned above, unlike Hobbes, Locke emphasises that it is only public good, which is the criterion of acceptability of a government. He also knows that no government is infallible so that the misuse of power is always a distinct possibility. Accordingly, he provides for the dissolution of the government. When the legislature acts contrary to the trust reposed in it, an opportunity for disobedience appears. The government act against the trust "when they endeavour to invade the property of the subject, and to make themselves or any part of the community masters or arbitrary disposers of the lives, liberties and fortunes of the people."<sup>9</sup> In doing so they put themselves "into a state of war with the people who are thereupon absolved from any farther obedience."<sup>10</sup> Whenever tyranny replaces just rule, people are likely to revolt in whatever way they can.

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8. For details see Plamenatz, J.P.: Man And Society, London 1963, V. I, Chapter 6.

9. Treatise, II/221.

10. II/222.

Locke says:

The people generally ill-treated, and contrary to right, will be ready upon any occasion to ease themselves of a burden that sits heavy upon them.<sup>11</sup>

We have given only a brief survey of Locke's political philosophy as our primary interest is not in his political theory as such but in the implications of it for civil disobedience. On that we may now sum up Locke's position as the following. The end of the government which is established through mutual consent is public good.<sup>12</sup> So long as the government cares for public good, and there is no misuse of power, there is no case for anxiety. However, when public good is overlooked and the government acts unjustly, we are absolved of our obedience.<sup>13</sup> As according to Locke, no government is infallible, the possibility exists of misuse of power by a government to the utter neglect of the function proper to it-the function, namely, of preserving the life and liberty of people. As Locke clearly states there are bad rulers just as there are good rulers:

...the proud and ambitious tyrant doth think his kingdom and people are only ordained for satisfaction of his desires...appetites; the righteous and just king doth...acknowledge himself to be ordained ~~for~~ the procuring of the wealth and property of his people.<sup>14</sup>

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11. II/224. 12. Letter, pp. 128, 145 & Treatise II/3, 229.

13. *ibid.*, p. 155; also II/222. 14. quoted by Locke, II/200.

Locke refuted the absolutism of Filmer and maintained that a king is not a king by virtue of his 'divine right', rather he is a king only by virtue of his lawful and just deeds. The subjects authorise him to be their king and it is they who can also dethrone him. Cautious about the misuse of power, Locke set limits to the powers of the magistrate by defining clearly the relative powers of the magistrate and the church. In this way, Locke frees the individual from an unconditional obedience to the state and leaves room for disobedience. As the government derives its power from the consent of the governed, in any controversy between the governed and the government, the governed will be the judge. As we mentioned above, depending on whether the government is judged to be fair and good in general but with occasional lapses, or whether it is judged to be thoroughly corrupt, unfair and exploitative, bringing harm to the majority of its subjects, the case for limited disobedience or for revolution is made. Locke is quite clear on the issue that revolutions



do not occur at small injustices, as he says:

Such revolutions happen not upon every little mismanagement in public affairs. Great mistakes...will be borne by the people without mutiny or murmur. But if a long train of abuses...make the design visible to the people ...(they) endeavour to put the rule into such hands which may secure to them the ends for which government was at first erected...<sup>15</sup>

But in a situation where the need for revolution has not arisen, and the individual considers the system as a whole to be worth preserving but yet he cannot in obedience to his conscience obey some of its laws, the old dilemma which confronted Socrates arises. Locke's resolution also seems to proceed in the same lines. We have already seen that he commands that the individual should follow his conscience and disobey the law which he finds morally obnoxious. In such cases though he is not explicit about it, but it is clear from his writings and other injunctions that he holds that this sort of disobedience should be of a peaceful nature. Further, the individual should be prepared to accept the punishment, as Locke puts it:

...I say that such a private person is to abstain from the action that he judges unlawful, and he is to undergo the punishment which it is not unlawful for him to bear.<sup>16</sup>

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15. Treatise, II/225.

16. Letter, p. 155.

Here the word 'unlawful' is loosely used by Locke by which he means 'that which offends the individual'. It is the individual judgment which emanates from his conscience and plays a vital role. For example, Locke says if anybody is compelled by law "to embrace a strange religion and join in the worship and ceremonies of another church" then "men are not in these cases obliged by that law against their conscience; for obedience is due in the first place to God and afterwards to the laws."<sup>17</sup>

Thus in the case of a conflict between Conscience and state laws, Locke recommends that the individual may disobey the law and obey his conscience and thus preserve his higher values. As in Socrates, Locke posits the realm of higher values and recognises the possibility that a conflict may arise between 'higher values' and 'state-values'. As is clear from the quotation above, Locke does recommend disobeying the laws but ~~not running~~ away from punishment - a characteristic which we found in Socrates and which as we shall see later is to be found in Thoreau and Gandhi also. Why does Locke want the individual to accept the punishment? The reason is that he does not want to bring about chaos in the society.

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17. *ibid.* Cf. Socrates' statement in Apology: "I shall obey God rather than you..." For details see Ch.I, p.5.

For the same reasons he recommends this disobedience to be peaceful. The individual disobeys the law in this world peacefully so that nobody's security is endangered though in the other world God "...will retribute unto everyone at the last day according to his deserts; that is according to his sincerity and uprightness in endeavouring to promote piety, and the public weal and peace of mankind".<sup>18</sup> In this way, the individual takes care of his 'soul' either by acting in accordance with what he considers to be a good law or by not acting in accordance with that law which he considers to be immoral. That is, he takes care of his soul in one case by obeying the law and in the other case by disobeying the law. He can take care of 'public peace'<sup>19</sup> through non-violence in his disobedience. Thus the higher values are cared for, the respect for the legal system as a whole remains intact so that there prevails in society basic law and order which is a pre-requisite of any good living. That such disobedience should be peaceful or non-violent is also the spirit of law of nature which says: "...no one ought to harm another in his life, health, liberty, or possessions."<sup>20</sup>, that is,

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18. Letter, p. 156.      19. ibid.

20. Treatise, II/6.

our act of disobedience ought not to injure anybody or his property.

For Locke, such individual disobedience termed in contemporary phraseology as 'civil disobedience' would be an act of non-violent disobedience of an unjust law, on grounds of conscience. And it is distinguished from a revolution which is necessarily violent and is done by rebelling majority.

To conclude, Locke recognises the usefulness of political society. In addition he also recognises the place of 'higher values' although the latter are generally not achievable without the 'state-values'. He further recognises the fallibility of any government and rejects state absolutism, making room for disobedience. If the state is beyond redemption, disobedience by the majority, with the use of violence, that is, revolution, is called for. However, if the system in general is fair and good but some individual(s) finds (find) some law to be immoral or unjust, then the solution offered is one with which we are already familiar. He (they) may disobey the law although he (they) must do it peacefully and also be prepared to accept the punishment. This way justice is done to the demands of the Conscience as well as to the obligation felt towards the state, living in which the individual has availed himself of its benefits.

## CHAPTER III

### HENRY THOREAU'S CONCEPTION OF CIVIL DISOBEDIENCE

In July 1846, Thoreau walked into Concord village from Walden Pond to pick up a shoe he left at the cobbler's shop for being repaired. While on his way he was stopped by the local constable, tax-collector and jailor and was asked to pay his poll-tax for the last several years. "I will pay your tax, Henry, if you are hard up" said the constable. He also offered to get the tax reduced if it was too high for him.<sup>1</sup> However, Thoreau did not accept the offer, nor did he agree to pay the tax. He did not refuse to pay it because he had no money. Therefore, the question of his accepting the offer of the tax-collector who was himself ready to pay on Thoreau's behalf did not arise. Nor was Thoreau against all taxation. But for him it was a matter of principle not to pay this particular tax, viz., the

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1. For details see the 'Introduction' of The Variorum Civil Disobedience, annotated with an Introduction by Walter Harding, Twayne Publishers, N.Y. 1967; and also Walter Harding's A Thoreau Handbook, N.Y. Univ. Press, 1959, pp. 8-9.

poll-tax, which was a head tax imposed on every male between the ages of 20 and 70. What was the principle involved therein? The trouble with paying the state poll-tax according to Thoreau, was that it went towards supporting however slightly and indirectly the practice of warfare and slavery.<sup>2</sup> These two practices Thoreau considered to be evil and unjust in principle. As a conscientious individual he was scrupulous about matters of principles as well as doing anything which would in any way support an unjust course of action.

At Thoreau's refusal the jailor wanted to lock him up. "As well now as any time" was the answer. Thoreau's friend B. Alcott and the latter's English friend both were arrested on the same charge, but never jailed as J. Hoar paid the tax on their behalf. They **set** an example before Thoreau to fight injustice. The jailor gave Thoreau several warnings before finally arresting him. He apparently understood that Thoreau was disobeying the law as a matter of principle with the intention of getting it changed. As such Thoreau

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2. See Thoreau, H.D.: "Slavery in Massachusetts" published in Thoreau: People, Principles and Politics, edited by Milton Meltzer, Hill and Bang 1963, pp. 108-23.

wanted his disobedience as well as his willing acceptance of the punishment<sup>3</sup> to be publicly known. Thus the jailor is reported not to have been worried about Thoreau' running off for fear of being taken to jail.<sup>4</sup>

After aunt Maria Thoreau paid the tax, the jailor came to release Thoreau and was astonished to discover that Thoreau was not willing to leave the jail.<sup>5</sup> As he did not pay the tax he wanted to undergo the punishment. This reminds us of Socrates who accepted the punishment so much so that he refused the escape-offer. This further shows that not only the civil disobedient accepts punishment in name, but he accepts it with heart and soul and harbours no intention of escaping when getting such an opportunity. Concerning the acceptance of punishment, the difference between the robbers and thieves on the one hand, and the civil disobedient on the other is this: that the former are dragged to jail whereas the latter go to jail untied.

However, Thoreau was not pleased at his aunt's action as it hindered the path of his civil protest

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3. Cf. Thoreau, H.D.: "Civil Disobedience" CDTP., p. 39.

4. as foot-note 1.

5. *ibid.*

against the injustice being done.<sup>6</sup> Going to jail was intended to draw the attention of men of good will towards the evil law and thus to help in effecting its alienation. If enough men go to jail their acts would block the machinery of the state and thus make the evil law unenforceable.<sup>7</sup> As a matter of historical fact, Thoreau did not get much cooperation from public corners with the result that his civil disobedience did not succeed much and remained an unsuccessful protest. For a successful protest the law should be frustrated<sup>8</sup> to the extent that its implementation becomes impossible. It is only in such a case that it will have to be changed.

Before we proceed, we ought to take note of a distinction which Thoreau recognises and which we need to understand for a proper appreciation of his work. This is the distinction between 'trans-legal' and 'legal' justice.<sup>9</sup> This distinction points to the fact that

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6. CDTP., p. 39. also see Walter Harding's 'Introduction' to The Variorum Civil Disobedience.

7. CDTP., pp. 34-5.

8. Cf. Bedau, H.A.: "Anyone commits an act of civil disobedience if he acts...with the intent to frustrate (one of) the laws, policies, or decisions of his government.", "On Civil Disobedience", JOP., 1961, p. 661.

9. Cf. Meltzer, p. 119; and also CDTP., pp. 34-5.



justice is not exhausted in legality. We can make a distinction between 'what is morally just' and 'what is legally just'. Endorsing such a distinction H.L.A. Hart remarks: "We think and talk of 'justice according to law' and yet also of the justice or injustice of the law."<sup>10</sup> The laws are required to conform to the moral ideals of the people as much as possible but this conforming can never be absolute, as the society is composed of individuals who differ widely in their moral ideals. As a result the law may offend individual(s). Thus Thoreau holds that 'moral right' and 'legal right' may not necessarily coincide. The seat of moral right is in conscience. This reminds us of our previously held two-fold distinction between what we called the 'higher values' and the 'lower values'. As we remarked there the former owe their origin to Conscience, Voice of God, Reason etc., whereas the latter emanate from the institution of a political society. Here again the question arises: What shall be done if there is a conflict between the two? Thoreau answers that in no way the citizen should resign his conscience to the

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10. The Concept of Law, Oxford University Press, 1961, p. 7; also pp. 154, 159.

legislator:

...legislators, politicians...serve the state chiefly with their heads; and as they rarely make any moral distinctions, they are as likely to serve the devil, without intending it, as God. A very few...serve the state with the conscience also, and so necessarily resist it for the most part...<sup>11</sup>

According to Thoreau no undue respect for law is required, as it will commit one to do many unjust things, which a just man will never choose to do. Where 'morality' and 'legality' come into conflict "the only obligation which I have a right to assume is to do at any time what I think right".<sup>12</sup> He further remarks that because of such a blind respect "even the well-disposed are daily made the agents of injustice."<sup>13</sup> Such men for him are more of 'machines' than men. He remarks: "A common and natural result of an undue respect for law is, that you may see a file of soldiers, colonel...and all...marching in admirable order...against their wills, ay, against their common sense and consciences..."<sup>14</sup> Thoreau declares that if the law requires somebody to be the agent of injustice then the law is to be broken, as he puts

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11. CDTP., p. 29.

12. ibid., p. 28.

13. ibid., p. 29.

14. ibid.

it: "What I have to do is to see, at any rate, that I do not lend myself to the wrong which I condemn."<sup>15</sup> As Socrates refused to obey an unjust government as for example the 30 tyrants who wanted to make him an agent of injustice, so also Thoreau always resisted injustice in whatever form it came to him. He says:

Some years ago, the State met me in behalf of the Church, and commanded me to pay a certain sum toward the support of a clergyman whose preaching my father attended but never I myself. 'Pay' it said, 'or be locked up in jail.' I declined to pay...I did not see why the schoolmaster should be taxed to support the priest, and not the priest the schoolmaster...<sup>16</sup>

That a schoolmaster should pay the priest, appeared to Thoreau as something unjust. It is the second time that he refuses to pay the tax which in his view was imposed unjustly. However, Thoreau holds that as long as the government as a whole is just and fair and only specific laws or policies of it are bad, requiring protest from conscientious individuals, a proper respect should be shown to the laws in general. Thus even when the civil disobedient disobeys the laws, he ought to help maintain the respect for law and order by accepting the punishment. However, when it is not merely one law or two

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15. *ibid.*, p. 35.

16. *ibid.*, p. 39.

which are deemed unjust but the regime as a whole becomes corrupt and tyrannical then "all men recognise the right of revolution" that is, "right to refuse allegiance to, and to resist the government when its tyranny or its inefficiency are great and unendurable."<sup>17</sup> That is in such an extreme case we do not owe any obedience to the state. Thoreau does not recognise any all-time obligation to the government. Thus the government is to be resisted when it becomes unjust to the individual(s). When the government becomes totally unacceptable, a revolution is in place whereas when some particular law offends the individual, civil disobedience seems to be an effective remedy. This is close to the Lockian bifurcation between 'revolution' and 'civil disobedience'.

However, not every man can lead an armed rebellion because not every one is a hero or an armed soldier, but it is relatively easier for individuals to engage in disobedience of law. Even if such individuals are in minority yet they can become irresistible by clogging the whole state machine with their whole weight.<sup>18</sup> But though Thoreau leaves room not only for civil

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17. CDTP., p. 30; also Meltzer, pp. 120-21.

18. ibid., p. 37.

disobedience, but also for revolution, it would be a mistake to describe him as an anarchist.<sup>19</sup> The chief source of this seems to be the very first line of his celebrated essay which reads: "I heartily accept the motto-"That government is best which governs least..."<sup>20</sup> Thoreau further explains that when "carried out, it finally amounts to this, which I also believe-"That government is best which governs not at all..."<sup>21</sup> These two assertions cannot be equated as the second one leads to a paradox whereas the first one does not. The second assertion is paradoxical in the sense that if some body of people does not govern at all, it is no more a government. 'Governing' is a necessary function of the government without which it cannot be called a government. As sugar without its 'sweetness' is nothing, similarly, there can be no government without 'governing'. Government in other words is that which governs, not that which does not govern. This is the reason Thoreau cannot accept both these two. Then which one does he accept? Anarchist is one who does away with all sort of

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19. Goldman, Emma: "Anarchism: What it really stands for" reprinted in Straughton Lynd, ed., Non-violence in America, N.Y., 1966, p. 126.

20. CDTP., p. 27.

21. ibid.

government - not one who wants to bring a different and better sort of government in place of a bad one. Thoreau says: "...I ask for, not at once no government, but at once a better government."<sup>22</sup> However, a 'better government' is not the negation of government but what he wants is no undue respect for law. He feels dissatisfied with an unjust government and "cannot for an instant recognize that political organization as my government which is slave's government also."<sup>23</sup> Not only he wants to have a better sort of government but he intends to "declare a quiet war with the state", but it is clear that by this he means nothing more than a 'war' of disobedience waged against state's unjust law or policies so that a better government is ushered in. According to him, that government is 'better' which gives considerable freedom to the individual and in which there is no undue pressure and no injustice. He remarks:

The progress from an absolute to a limited monarchy, from a limited monarchy to a democracy, is a progress toward a true respect for the individual...I please myself with imagining a state at last which can afford to be just to all men, and to treat the individual with respect as a neighbour...<sup>24</sup>

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22. *ibid.*, p. 28.

23. *ibid.*, p. 30; also Meltzer, pp. 115 and 221.

24. CDTP., pp. 47-8; also Meltzer, p. 121.

It is clear then that it is not the case that he does not want a state but what he wants is a just state, giving proper place to the individual(s) and doing justice to all. Hence, that government is 'best' which justly governs and recognises the true significance of the individual as a 'higher and independent power', treating him as an end in itself and not as a means to anything beyond. On this principle, limited monarchy is preferable to an absolute monarchy, a democracy to a limited monarchy.

Further, since anarchy is the negation of all government, then civil disobedience can never be consistent with it, as any sort of disobedience presupposes some sort of government. Hence, a civil disobedient can never be an anarchist in principle as well as in practice. To put it differently, where there is no government the question of disobedience will never arise, that is to say, the presence of a government is a necessary presupposition of civil disobedience. Thus as no bachelor can be a married man, similarly, no civil disobedient can be an anarchist. The difference is a conceptual one. Thoreau being a civil disobedient can never claim himself to be an anarchist.

Thoreau's position may then be summed up as follows. Thoreau admits that there is a higher law than the law of one's land and this is the law of conscience. The former is the source of higher values whereas the latter of the state-values. When the two, viz., the higher law and the law of the land come into conflict, the higher law is to be obeyed and deliberate violation of the law of the land is required. However, if the law of the land is deliberately violated, the violatee must be willing to take the full consequences of his disobedience, including going to jail, that is, peacefully accepting the punishment. Such a violatee never runs off from the punishment even when he is offered an opportunity to run. For Thoreau, not all cases of disobedience are acts of civil disobedience. For him, any act is an act of civil disobedience if and only if it constitutes a deliberate violation of some unjust law on grounds of conscience. It cannot in other words be done on the ground that some one dislikes the law(s). No prejudice against law is required. Again that such an act is a peaceful act and does not intend to harm or injure anybody, is clear from Thoreau's writings as well as from his actual conduct, as sketched in the beginning of this chapter.



As to the question when one should commit civil disobedience, Thoreau's answer is clear. Civil disobedience is committed when some law endangers the liberties of individual consciences, plays with the rights of the individuals and mocks at their civil interests. In other words, when justice is not cared for, the time is ripe for civil disobedience by the individual(s). It is also in these circumstances that a revolution may occur, but then it is not one law or policy of the government but the entire governmental structure becoming an embodiment of injustice, nonetheless it is not a one-man affair. Thoreau, however, established civil disobedience as a minimal reaction to a morally intolerable act or policy of the government, that a moral or conscientious individual could make.

## CHAPTER IV

### M.K. GANDHI'S CONCEPTION OF CIVIL DISOBEDIENCE

In order to understand Gandhi's contribution to theory and practice of civil disobedience, we must first of all understand the concept which he used most, namely, the concept of 'satyagraha' and see how it is related to 'civil disobedience'.

Gandhi held 'civil disobedience' to be a 'branch'<sup>1</sup> of 'satyagraha', meaning thereby that civil disobedience is satyagraha carried into the political sphere.

Where is 'satyagraha' and what is the distinction between the two? According to Gandhi, all satyagraha can never be civil disobedience whereas all cases of civil (that is, non-violent) disobedience are cases of satyagraha. The term 'satyagraha' is immanent as well as transcendent to 'civil disobedience'. Hence,

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1. Satyagraha Ed. B. Kumarappa, Navajivan, 1951, p. 4, and also Gandhi: Essential Writings, Edited: V.V. Raman Murti, Gandhi Peace Foundation, 1969, pp. 115-17.

the former is wider than the latter. However, it is not civil disobedience alone which is non-violent but satyagraha is non-violent as such. What then is other type of satyagraha? And who is the opponent in such a satyagraha? Gandhi talks about 'domestic' satyagraha which is 'satyagraha' but not 'civil disobedience'. In other words, 'domestic satyagraha' is a form of 'satyagraha'. Indeed, no field of life is alien to the practice of satyagraha. 'Domestic satyagraha' according to Gandhi is satyagraha in non-political region, wherein the individual tries to convert the heart of his opponent, no matter whether the opponent happens to be his wife, brother, father or neighbour, and to get his view-point accepted. A very typical example of such a satyagraha is found in Autobiography where Gandhi endeavours to vindicate his stand against Kasturbai, his wife, with the result that she yields:<sup>2</sup>

As civil disobedience is found to be a branch of satyagraha, a thorough study of the former presupposes a study of the latter. What is this

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2. AUTO. Translated by Mahadev Desai, Navajivan, 1927, pp. 240-1. For a detailed account of such instances see R.R. Diwakar's Saga of Satyagraha, Gandhi Peace Foundation, 1969, pp. 115-17.

satyagraha? Of what elements does it consist? How do we distinguish it from other related concepts, such as 'duragraha', passive resistance' and 'non-cooperation? The term was coined by Gandhi in South Africa, as the term 'passive resistance' was not found appropriate to convey the inherent meaning of satyagraha though previously he did use this term in place of the former term. Maganlal Gandhi suggested 'sadagraha' but Gandhi changed it to 'satyagraha'.<sup>3</sup> The world has a Sanskrit origin, being a compound word formed of 'satya' (truth) and 'agraha' (insistence, adherence or holding fast), as such "Its root meaning is holding on to truth, hence truth-force. I have also called it Love-Force or Soul-Force."<sup>4</sup> What is this 'truth' and why 'truth-force'? According to Gandhi, this 'Truth' in the last analysis is one with Soul or Brahman. That is why it is called 'truth-force' or 'soul-force'. The word 'satya' is derived from 'sat' which means 'being' or 'that which exists'. Thus the power generated by adhering to Truth is also the power of the Soul, indeed the power of the entire

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3. AUTO. p.235.

4. Kumarappa, p. 6.

creation. The man whose life is in harmony with and for the sake of Truth thus carries with him the cosmic power of the Way. Thus in the long run such an adherent of Truth, a satyagrahi, is irresistible. We can thus understand Gandhi's insistence, at times when events seemed to take a reverse course that the fault must lie in the sincerity and purity of the intentions and conduct of a satyagrahi. For insincerity would generate deviation from true path and only such a deviation can explain failure. The failure of a man who is truly acting in accordance with the law, the Truth, the Way which is what Gandhi meant by satyagraha is inconceivable.

When we keep in mind such deep connotations of Gandhi's Truth, we are able to understand his adhering to and his insistent emphasis on good-will, friendliness, compassion and love, and his total rejection of violence. For such a truth can never be realised through ill-will and hatred. Indeed in so far as it is love which is the law of the universe and not hatred and ill-will. 'Truth' comes to be identical with 'non-violence'. If there has to be any suffering, let it be on the satyagrahi himself, for he must not hold the comforts and ease of his own self

higher than the Truth which is unselfish love and non-violence.

Thus the path of satyagraha is really a whole way of life. A way of life in which one clings firmly to Truth alone, which to him is God and to which he dedicates his whole life. As one whose whole life is dedicated to Truth alone, the satyagrahi finds that he must resist evil and untruth wherever he confronts them. In whatever way of life they crop up, he finds himself called upon to fight them: though it is clear from the above that in doing so he must fight the evil and not the man (men) behind it. Thus a satyagrahi would protest against the evil but would refuse to inflict any suffering on the evil-doer, although he would gladly take suffering on himself. Thus satyagraha refers to the struggle against evil in any sphere of life. In so far as civil disobedience is considered by Gandhi as the practice of satyagraha in the political sphere all cases of non-violent disobedience are also cases of satyagraha, though the reverse is not true. Only confusion follows if this relationship is overlooked. Panter-Brick, for instance, seems to use frequently 'satyagraha' and 'civil disobedience' interchangeably. To quote him:

"... to speak of satyagraha is to speak of a weapon... a weapon which refuses to be limited by legality... Challenge, illegality and action-these are so many keys with which Satyagraha is equipped... For though Satyagraha rejects violence, it does not renounce illegality..."<sup>5</sup> This sort of usage is likely to cause a lot of misunderstanding and confusion while one makes an attempt to understand Gandhi's satyagraha. It seems to say as if 'satyagraha' is exhausted in 'civil disobedience' as the former is described to be 'illegal'. This prevents an adequate explanation of 'satyagraha in non-political sphere where no question of legality or illegality arises. Everywhere in other words, satyagraha cannot take the form of civil disobedience. As all 'satyagraha' is not 'civil disobedience' to use these words interchangeably would be a mistake.

In brief, in the various cases where individuals find themselves set against each other such as where there is a conflict between

- (a) an individual versus another individual  
(as in domestic satyagraha);

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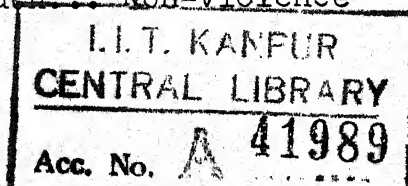
5. Panter-Brick, S.: Gandhi Against Machiavellism, Asia Publishing House, 1966, pp. 18-24.

- (b) an individual versus a group of individuals;
  - (c) a group of individuals versus another group of individuals;
  - (d) an individual citizen versus the state;
  - (e) a community of citizens versus the state;
- only (d) and (e) will fall under the purview of civil disobedience.

The history of satyagraha goes far back to Gandhi's stay in South Africa where he organised it for the first time against humiliating law enforced by the South African Government on its Indian population. Later, he ushered it in Champaran, Kheda and Bardoli to remove certain grievances of the oppressed workers and peasants. The satyagraha in South Africa was directed against the government's oppressive and discriminatory policies against the Indians. So was the satyagraha in Champaran. In Ahmedabad, Gandhi directed his struggle against the mill-owners with whom he had otherwise excellent personal relations. The first two of these will count as cases of civil disobedience, whereas the third would not. For a satyagrahic pursuit the purity of means as well as that of the end is equally required. From what we



said above about the aim and essence of Satyagraha, it is clear that there is no place in Gandhi's Satyagraha for any methods which are contrary to the Truth and the spiritual law. That any such measures may be resorted to on the ground of expediency will fail to impress. Thus Gandhi explicitly rejects the specious view that ends justify the means. This clearly distinguishes Gandhian position from the positions adopted by Machiavelli and Marx. Gandhi advocated the purity of both whereas according to the latter if the end is good any means could be adopted. On the other hand for Gandhi bad means inevitably bring about a bad result. In other words, only good means bring about a good result. For instance, if someone has to collect money for his ailing mother, he may either steal, rob somebody, sell some of his belongings, (if he has any), or earn by labour (if the time permits). The end contemplated here is the collection of money but all means described above do not have equal worth. The goodness of an end could be vindicated by pure means only. The bad means nullify the goodness of the end achieved. Gandhi says: "Improper means result in an impure end... one cannot reach truth by untruthfulness. Truthful conduct alone can reach truth. Non-violence



is embedded in truth..." He further declares himself to be an "uncompromising opponent of violent methods even to serve noblest of courses... Experience convinces me that permanent good can never be the outcome of untruth and violence."<sup>6</sup>

All methods adopted in satyagraha are non-violent. Good cannot come out of evil and evil cannot come out of good.. Gandhi compared the means to the seed and the end to a tree:

The means may be likened to a seed, the end to a tree... I am not likely to obtain the result flowing from the worship of God by laying myself prostrate before Satan... If I want to deprive you of your watch, I shall certainly have to fight for it; if I want to buy your watch, I shall have to pay you for it; and if I want a gift I shall have to plead for it; and according to the means I employ, the watch is stolen property, my own property or a donation.<sup>7</sup>

As in Gandhian way of life Truth, Love and Non-violence, hang together supporting each other and all together leading to the actualisation of the Supreme Spiritual Power, viz., God violence has no place in his programme of action. The only possible way in which it could have been smuggled in viz., through

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6. For details see Kumarappa, pp. 9-15.

7. Hind Swaraj or Indian Home-Rule, Navajivan, 1946, pp. 51-2.

the 'ends justify the means' slogan was categorically and unambiguously rejected by Gandhi. Satyagraha is a pursuit after truth which is an end in and by itself, and in this search for Truth there is no place for falsehood, ill-will and violence not even as means. As the latter are the very anti-thesis of Truth; as such they can never lead to truth. Now we can distinguish 'satyagraha' from 'duragraha'. It was previously seen that 'satyagraha' is 'insistence on truth'. On the contrary, 'duragraha' is 'insistence on falsehood'. The Sanskrit prefix 'dur' is used in the sense of 'bad'. 'Durvyavahara' for example is 'misbehaviour' or 'bad behaviour'. 'Duragraha' is 'bad insistence' or is 'insistence on badness', which is the same thing as 'insistence on falsehood'. Thus 'satyagraha' and 'duragraha' are poles apart. As satyagrahi is viewed as a person who clings to Truth, duragrahi can be viewed as a person who clings firmly to falsehood. In the latter case, the end is bad, though the means may be either good or bad, that is why it is called 'duragraha'. For instance, violent kidnapping of a girl, against her will and consequent forced marriage with her constitutes 'duragraha'. Here the end as well as the means is bad. However, in

duragraha non-violent means may apparently be adopted though the evil internally dominates the intentions of the doer. That is why Gandhi insists on non-violence in mind, word and action. However, the duragrahi has no patience for mutual discussion and understanding of the situation but he wants to impose his decision on others. The opponent is harassed by the duragrahi and is subjected to a lot of suffering, whereas the satyagrahi imposes the suffering **on his own self**.

As far as 'passive resistance' is concerned, Gandhi himself used this expression to characterise his satyagrahic activities. But later on he considered the term 'passive resistance' too narrow to convey the meaning of satyagraha. In passive resistance there is no guarantee of not using physical force and other forms of violence even though the end may generally be desirable. In this regard, it is a kind of duragraha. Among the British people, for instance, whenever a small minority did not approve of some obnoxious law, instead of rising in rebellion, it took the passive or the milder step of not submitting to law and inviting the penalties of such non-submission on themselves. But non-violence was not a necessity of principle for them, contrarily, they did intend to

following alternatives are possible:

- (a) both ends and means are good;
- (b) end is good but means are bad;
- (c) both ends and means are bad;
- (d) end is bad and the means are good.

Only (a) is a case of satyagraha as both means as well as ends are good. (c) is a clear-cut of duragraha where both ends as well as means are bad. It is rather the highest degree of duragraha.

(b) could be cited as a case 'passive resistance', in which the end that is, redress of a specific grievance by the English is good but the means are dominated by evil intentions, that is, they are bad in essence.

Gandhian 'non-cooperation' and 'civil disobedience' *come* under (a) as they require the purity of both.

It is also necessary to distinguish 'satyagraha' from 'non-cooperation'. Previously, it was pointed out that satyagraha is a pursuit after Truth and in political sphere it takes the form of civil disobedience for rectification of particular grievances. It was by satyagraha as non-cooperation and not as civil disobedience that Gandhi intended to overthrow the British regime. Civil disobedience, on the contrary, was concerned with redress of specific

grievances which originated from laws considered to be unjust by the civil disobedient. In other words, as civil disobedient Gandhi never intended to overthrow the British Government but he did it only as a satyagrahi or as a non-cooperator. According to him the term 'non-cooperation' was defined as per the programme of 1920. He remarks:

... (as per) the programme of 1920... no negotiation with or petition to the Government of the day was possible except for the purpose of attaining Swaraj... My purpose is to distinguish between non-cooperation, with attainment of Swaraj as its object, and civil resistance as that of Bardoli, with the redress of a specific grievance as its object.<sup>10</sup>

Consistent with his general approach, Gandhi recommended non-cooperation with the evil deed, not a total rejection of the evil doer. For instance if the evil-doer goes to him for food, he will hardly refuse him but, on the contrary, if he asks him to mix poison in it and administer it to somebody, Gandhi will definitely refuse to cooperate with such an evil-doer. Socrates refused to cooperate with the thirty tyrants in bringing Leon from Salamis, for being murdered, though the former admitted that good should be done even to the evil-doers who might happen to be our enemies. This is the well-known precept: hate the evil not the evil-doer: the sin not the sinner.

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10. Raman Murti, pp. 40-41.

These distinctions enable us to distinguish between Gandhi as a non-cooperator and Gandhi as a civil disobedient. In the former case he rejected the entire structure of the government, calling it a 'Satanic' government, though in the latter case he accepted the legal system as other civil disobedients do, that is, he worked within the given legal framework and sought redress of specific grievances. He accepted the British Government in South Africa and protested only against what he considered to be unjust laws or policies. There the British legal system did not completely hinder his pursuit after Truth, as also in India only for a short time, though afterwards it started hindering vehemently his path and he had to modify his course of action. And it is only in the end that from a civil disobedient he turned out to be a revolutionary. He comments:

As a law-abiding citizen my first instinct would be to obey the order... But I could not do so without doing violence to my sense of duty... I have disregarded the order served upon me not for want of respect for lawful authority, but in obedience to the higher law of our being, the voice of conscience.<sup>11</sup>

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11. AUTO., p. 305.

Thus he disobeyed not because he cherished no honour for the legal system, or because he did not accept the legal system but because certain commands of it conflicted with his higher ideals. Civil disobedience ceased the moment the grievance was redressed, though the non-cooperation movement ceased only after India gained freedom. In the beginning he obeyed the British system of government and helped it in various ways as he says: "Hardly ever have I known anybody to cherish such loyalty as I did to the British Constitution... those days I believed that the British rule was on the whole beneficial to the ruled."<sup>12</sup> He further remarks, "... my loyalty to the British rule drove me to participation with the British in that war... if I demanded rights as a British citizen, it was also my duty, as such, to participate in the defence of the British Empire."<sup>13</sup> All this faith in the British rule evaporated when it showed its true colours by breaking the promise given to the Indian people that India would have an autonomous government after World War I. The genocide in Punjab and the

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12. As quoted by C.F. Andrews in Mahatma Gandhi's Ideas, George Allen and Unwin, 1949, pp. 230, 238.

13. AUTO., p. 156.



Rowlatt Acts disillusioned him further to the point that he characterized the British Government as 'Satanic'. This government he found was based on falsehood, injustice and hypocrisy and thus it hindered his pursuit after Truth as not only it became an agent of injustice but it wanted others as well to cooperate in its treacherous and inhuman deeds. Gandhi further realised that Indian resources were being exploited for benefits of the British and all top-positions were being given to them in order that they might have an unquestionable hold on the Indians. This was a great injustice as Indians were treated as aliens in their own country. The Jalianwala Bagh tragedy shocked him: "A great crime has been done in the name of the Law in the Panjab... The time has come for the victims to be the victors in the field of righteousness."<sup>14</sup> Gandhi was fighting for the True and the Right and as the British Government hindered these pursuits, it became necessary to uproot this falsehood. In utter disappointment Gandhi returned his medals to the Vice-roy. He became increasingly convinced that the British Government was "immoral

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14. Andrews, p. 234.

beyond description" and it was moving from wrong to wrong in order to defend its immorality. He wanted to 'mend' or 'end',<sup>15</sup> such a system of government but as he found the system beyond any hope of redemption, its elimination was the only course left. Even here, however, true to his character and principles, he did not pronounce that Englishmen as individuals were bad people, but only that the political system which they had evolved in India had become an instrument of evil.

In practice of civil disobedience Gandhi's case also demonstrates the kind of dilemma that a moral man and a conscientious citizen has to face in confrontation with an immoral and unjust law. Gandhi admits that there are 'state values' for the achievement of which the political society is instituted and which in general men ought to respect, but he cannot accept them to be the highest concerns of a man: There are higher values of which the source is man's own conscience and his perennial search for TRUTH. In the case of a conflict between the two, a man must follow the course of action dictated by

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15. Ibid., p. 242.

his conscience. As he says:"... I have disregarded the order served upon me... in obedience to the higher law of our being, the voice of conscience... I have decided to ... submit without protest to the penalty of disobedience."<sup>16</sup> Gandhi was called in Champaran to seek the redress of the unlimited woes of the indigo planters there. Without prejudice, he started investigations into the matter and found them to be unbearable, replete with high degree of injustice. Injustice for him breeds Untruth and he cannot as a man of Truth remain satisfied with it. In this case an order was served on him to leave the place. There appeared to him two conflicting alternatives: Either he could obey the order and leave the place without uprooting the evil, or he had to disobey the order and stay to fight the evil. The former alternative was not acceptable to him as a satyagrahi. As a man of conscience and as a seeker of Truth, he could not choose a course of action which implied running away from the scene of duty. Once a satyagrahi comes across an evil it becomes his duty at least to put

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16. AUTO., p. 305.

an endeavour to eliminate it. To obey the dictates of conscience and to preserve his sense of duty, he disobeys the law. And as in the cases studied in the preceding chapters, he intends to do justice to the sense of obligation to the state by willingly accepting the punishment, and by keeping his method essentially peaceful and orderly. In fact he hopes to win over his opponent by non-violence and love and thus lay the foundation for truly resolving a conflict. In Gandhi's view of life and society, no conflicts are solved by more force or violence. Force merely suppresses one party and in so far as the suppressed party has not been convinced and won over the conflict remains unresolved. Gandhi aims at bringing about an agreement by heralding a change in the basic attitude of the opponents. He believes in the possibility of a change in the beliefs and actions of contestants through the policy of love, cooperation and non-violence. In this Gandhi shows a faith in the essential goodness of human nature and its amenability to change by love.

Gandhi's insistence on the ends-means purity and non-violence even in political sphere tend to draw skeptical and critical comments. It is held

that such extreme insistence on absolute adherence to morality and non-violence is sure to hamper political action especially with reference to its effectiveness. Such critics would recommend approaching the political sphere with a readiness to compromise for the sake of desirable ends. If, for example, a certain measure of violence is likely to bring desired consequences only a naive man would cling to non-violence. However, to advance such criticisms on Gandhi only reveals a lack of understanding of his mind. For Gandhi does not conceive of effectiveness in terms of narrow political, economic or power gains. He is working towards nothing less than the pursuit of and realisation of Truth. To like and to bring others to live in harmony with the Truth that is the concern most valid for him. And he insists on non-violence, love and cooperation because he believes these to be the fundamental laws of life and the deep and noble truths of human nature. He perceives these to be essential to human nature, rejecting violence, hatred, bestiality in man as left-overs of man's animal ancestry, traits which can be and ought to be suppressed at the altar of his noble self. In Gandhi's view one cannot ignore the fact that man carries in

himself a divine element and so he is the highest of all creatures. Endowed with reason and a conscience, man can think, and distinguish between good and bad and decide; beasts cannot do these things. Only man can listen to the voice of conscience within. He knows the distinction between 'truth' and 'falsehood' and by virtue of this privilege is capable of realising God. In the brute the soul ever lies dormant. Man has free will, and reason; the beast knows no law but that of physical force.<sup>17</sup> Violent behaviour may come naturally to the brute, but in the case of man it is artificially fostered and imposed. When a man indulges in violence and cruelty we express our disapproval by calling it 'brutal' and 'beastly', suggesting that in so far as he behaved with violence, he fell from the human qualities.

As such man's nature, according to Gandhi, is not basically evil even though it is true that he has a two-fold nature. As animal, man is violent and as spirit he is non-violent. However, if he responds to the call of the inner spirit he will put all

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17. Raman Murti, p. 146.

endeavour to eliminate violence.<sup>18</sup> This is the sole prerogative of man that he can make spiritual progress. However, man will act non-violently, only if he realises himself to be a higher being, that is, he has to realise that he has a spirit which is higher than the dormant souls in animals. That is why Gandhi says that if he listens to the call of spirit within, his bestial behaviour will cease. In this sense then man is basically good, that is, he has this inner core which constantly guides him toward love and goodness. Professor Prem Nath objects to such a characterisation of human nature thus:

If man is basically good why the core of human personality allow itself to be afflicted by evil and why millions upon millions of men be helpless spectators to the other and millions indulging in collecting insanity that is war?<sup>19</sup>

But I hope that it has already become clear from the foregoing account that man according to Gandhi is basically good in the sense that non-violence, love etc., are the truths of human nature. Not all men express these truths in day-to-day life. That greed,

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18. *ibid.*, pp. 148, 163.

19. "Non-violence And Human Destinay" published in Gandhi: Theory and Practice: Social Impact and Contemporary Relevance, edited by S.C. Biswas, Simla, 1969, p. 507.

hatred, self-interest and violence play a large role in the behaviour of man individually and collectively is unfortunately too obvious to need any emphasis. What Gandhi wished to emphasise was that in spite of all this love, and non-violence are in fact written in the hearts of men and that if one makes contacts with himself at this level, they do respond. The following saying of Gandhi expresses it pithily, "not all men recognize the call of spirit within though all of them can". The possibility of a positive response to love and non-violence is for the follower of Truth a great boon. In its absence he may well open himself to charges of following an ideal that is too Utopian to be followed on this lowly earth. But fortunately, even though man has an animal ancestry yet the possibility of his rising above this level is there. Man continues to be evil because non-violence leads to a difficult path whereas the path of violence is easy to follow. In other words, it requires no training. Our sages and prophets are known to have taught lessons of love and non-violence but seldom any of them is known to have taught hatred, ill-will, malice and violence. To proceed towards the road to non-violence, first of all a determination to adopt it is required. The



individual has to recognise his higher nature and to listen to the call of spirit within. This will help him in recognising the futility of violence.-

Thus Gandhi insisted on making civil disobedience, an activity in the political sphere, also non-violent. We have already discussed above that satyagraha is a pursuit of Truth and that violence is inconsistent with this sort of search. Thus civil disobedience being a form of satyagraha must reject violence. The following additional reasons for keeping civil disobedience non-violent may also be noted.

Gandhi considers 'civil' in 'civil disobedience' to denote 'non-violence'. Thus if violence is used by a civil disobedient, the phrase 'civil disobedience' would be rendered a misnomer. According to Gandhi, 'civility' does not mean mere outward gentleness, but it requires internal gentleness also.<sup>20</sup> 'Civil' is 'polite' or 'humble'. Can 'civility' and 'violence' go together? For instance, if we beat somebody mercilessly, are we 'civil' in our behaviour? The answer is clear enough. The point is that these two cannot go together, as there can be nothing like

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20. AUTO., p. 323.

'violent civility'. According to Gandhi, to impose violence on somebody is to give him a kind of punishment and one who does not know the absolute Truth cannot punish.<sup>21</sup> Furthermore, even from the point of view of effectiveness, violence can find no place in civil disobedience. In this form it can easily be crushed and the purpose of civil disobedience, which aims at the redress of a specific grievance, is defeated. Gandhi puts it thus: "Even a child can see that if Indians resort to force, they can be crushed within the minute."<sup>22</sup> He further remarks, "...display of force by us against that of the Government is like a child attempting with a straw to stop the current."<sup>23</sup> Again, as a rule, a civil disobedient can hardly carry the community along and obtain or retain this support if he mars his campaign by violence. Gandhi's philosophy of action in political sphere rests on the faith that man's nobler impulses can be roused and that in the long run this is the only real alternative to unity and peace. Therefore, he can hardly allow violence to enter his

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21. Kumarappa, p. 3.

22. Raman Murti, p. 8.

23. *ibid.*, p. 153.

campaigns. On the other hand, by taking suffering upon himself and asking his non-violent followers to do the same, Gandhi makes it difficult if not impossible for the rest of the community not to pay attention to him and his demands. On the contrary, violence brings in greater lawlessness and anarchy, insecurity and fear with greater violence and repression from the government.

Non-violence as we have pointed out above has a positive as well as a negative connotation. In its negative form it means 'non-injury' to any living being. In its positive form it means the 'greatest love', the 'greatest charity'.<sup>24</sup> What is 'violence'? Murder and rape are clear and easily recognisable cases of violence. Throwing stones on others and beating somebody are also clear cases of violence. However, standing in front of workers and thus preventing them from going to work also constitute acts of violence. In fact, for Gandhi doing gross injuries only does not exhaust violence. In other words, even harbouring ill-will towards any creature involves violence whereas love and cooperation constitute non-violence. Thus Gandhi requires

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24. Raman Murti, pp. 137 and 171.

non-violence not only in action but with heart and will, that is, unless our will is tuned to GOOD WILL FOR ALL, non-violence is impossible to achieve.

As understood in these terms, there are degrees of violence, as there are degrees of non-violence. It is not a case of mechanical computing but of growth. Gandhi frequently insists on this fact. One who sticks to non-violence daily lessens the circle of violence and strengthens his life in non-violence to such an extent that he holds on to it even under greatest provocation. Indeed, its true test consists in its capacity for withstanding any amount of provocation. On the contrary, one who swears by violence daily widens the circle of violence and to that extent promotes destruction, hatred and ill-will.

It perhaps needs to be noted that Gandhian principle of non-violence when properly understood is seen to be as different from quietism as it is from violence. A satyagrahi cannot be a silent witness to any evils as for example, corruption, tyranny and repression of the weak by the vicious strong. Non-action in such cases is ruled out by Gandhi's whole approach to the problem of evil and untruth in life. The Gandhian satyagrahi must intervene, without

ill-will and hatred, against the vicious: he must still oppose him with all moral courage. If for intervening he is beaten or otherwise injured by the assailant(s), he must suffer that too. But he must not let ill-will enter in him against his oppressor, nor let him succeed in his evil action. As long as he has strength he resists. Faced with such humble and non-violent opposition, the beast of the oppressor will change. That non-violence must never be allowed to become an excuse for inaction and cowardice, was particularly emphasised by Gandhi. He warned against it in unambiguous words, saying that violence was preferable to cowardly action. He went to the extent of saying that if one was not strong enough to offer satyagraha which required tremendous moral courage, firm steadfastness in love, and a great capacity to suffer, it was better for one to engage in violent resistance than a cowardly withdrawal. This applies to persons as well as to nations. Thus on being asked by his son whether he should have used violence and saved his father while the latter was brutally assaulted, Gandhi replied that in case he did not find in him strength to offer non-violent resistance to the assailant, it was his

duty to save him even by using violence.<sup>25</sup> Again, in the context of a similar situation, involving the entire country, he said, "I would rather have India resort to arms in order to defend her honour...than...remain a helpless witness to her own dishonour".<sup>26</sup> However, the issue involves delicate matters and in the last resort it is an individual who must judge. Gandhi says that at every step, we have to use our own discrimination to decide what is himsa and what is ahimsa. In this there is no room for shame or cowardice.<sup>27</sup>

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25. Raman Murti, p. 149.

26. as quoted by L. Fischer in The Essential Gandhi, Allen and Unwin, 1963, p. 157; and also Raman Murti, p. 149.

27. Raman Murti, p. 135.

Recently, some philosophers have criticised Gandhian principle of non-violence on the ground that it is impracticable. It is maintained that in order to follow it exhaustively we are led to commit suicide, since in the very act of living which involves breathing, we 'kill' bacteria.<sup>28</sup> However, we can make a distinction between 'killing' and 'dying'. Many insects die while we breathe but it is hardly a case of our killing them as it would be if we use disinfectants on them. Many patients die in hospitals and (usually) doctors do not kill them. But even if some one does not place much score on this distinction and insists that in some oblique manner, we are here engaged in killing, it would not follow that on Gandhian principles it is not permissible at all, because although Gandhi pleads for a high degree of non-violence, he does recognise that a total

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28. For instance, Professor K.J. Shah remarks:  
 "By 'living being' Gandhi means all life... 'even sub-human life not excluding noxious insects or beasts', and the protozoa and the bacteria in the air. But if Gandhi includes all these among 'living beings' and killing a living being is sinful, then, since it is impossible to live without killing living being, living itself is sinful. To be born is sinful and to die is perhaps to be delivered from sin..." and further,  
 "...unless one wants to advocate universal suicide, one must reconcile the principle of non-killing with the claims of life...", "Some Presuppositions of Gandhi's Thought", published in Gandhi: Theory And Practice, edited by S.C. Biswas, Simla 1969, p. 514.

absence of violence from human life is not yet feasible. As such he does not hesitate in saying that some forms of killing specially when it concerns lower animals may well be necessary. For example, the insects and pests which destroy crops, bacteria and various kinds of viruses which spread diseases, animals which have gone beserk, pose a great danger to human life. Gandhi, in this context remarks:

I am not able to accept in its entirety the doctrine of non-killing of animals. I have no feeling in me to save the life of these animals who devour or cause hurt to man...I will not feed ants, monkeys or dogs. I will never sacrifice a man's life in order to save theirs.<sup>29</sup>

Still further he comments:

To allow crops to be eaten up by animals in the name of ahimsa while there is a famine in the land is certainly a sin...<sup>30</sup>

In all such cases, killing is recommended by Gandhi. One can hardly then be justified in inferring that on Gandhian principle of non-violence, we shall all commit suicide as our very process of living involves death of small bacteria through breathing or many other such activities.

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29. Non-violence in Peace and War, Navajivan, Ahmedabad 1960, V. III, p. 65.

30. Raman Murti, p. 135.



Gandhi's concept of 'non-violence' is so broad that we can conceive of satyagraha entirely in terms of pursuit and realisation of NON-VIOLENCE. It connotes the unending pursuit of Truth and struggle against evil and falsehood in any sphere of life and achieving these goals with constant adherence to love, compassion and total good Will towards all including one's opponent. No one will assert that it is an ideal that is easy to follow. But that is of course different from saying that it is impossible to follow. Gandhi's own life was a striking example of the integrity, nobility and large-heartedness that the pursuit of such an ideal may inspire.

To conclude for Gandhi: Satyagraha is a pursuit of Truth, as well as a technique in non-political and political spheres to fight injustice, and thus to resolve the conflicts through love and non-violence. Thus civil disobedience is an aspect of satyagraha. As a civil disobedient, Gandhi worked within the given framework of the government, even though he considered the elimination of the British rule as the goal of his non-cooperation movement. The notion of 'non-violence' is central to Gandhi's doctrine of satyagraha and civil disobedience. Finally, as we have made it clear

above, Gandhian resolution of the conflict between the two kinds of obligations, we have been dealing with throughout this chapter, takes essentially the line which has been suggested by our study of Socrates, Locke and Thoreau. The practice of civil disobedience as discussed in the preceding chapters offers a solution which is acceptable and sound.

In the preceding four chapters, we have been discussing the theory and practice of civil disobedience in the writings of Plato, Locke, Thoreau and Gandhi. It may be worth our while to pause for a moment here and reflect back to recapture some of the salient points that have emerged so far. Our survey started with Socrates. Whenever any law offended him, he disobeyed it to save his higher values and accepted the punishment to preserve the state-values. He never tried to escape punishment for his deliberate act of disobedience even when an opportunity was provided.

In Locke, we find perhaps a somewhat clearer argument for political disobedience. The government is considered by Locke to be based on mutual consent, and is established for the fulfilment of certain collective ends. No government by virtue of being a government can be considered to be a just government as justice is not an automatic feature of the government. The government is as fallible as any other human beings individually or collectively. Thus when the government fails to accomplish the ends for the actualisation of which it was instituted, Locke holds that political disobedience becomes legitimate. However, the individual who must disobey the laws which offend him, must cheerfully undergo the punishment for such an act of disobedience.<sup>31</sup> Although Locke does not explicitly say that the methods adopted to show one's dissent must be peaceful, yet it is implicit in his position as for example in his adherence to the law of reason. The law of reason hinders men from doing anything detrimental to one's own or others' life. However, it is only in Gandhi that a full and deep discussion of the place of

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31. Cf. "...I say that such a private person is to abstain from the action that he judges unlawful, and he is to undergo the punishment...", see Gough, p. 155.

non-violence in political **dissent** is to be found.

For Locke, as for Socrates obedience to the dictates of conscience and to God take predominance over obedience to man and his laws. Locke says that if anyone is compelled by law "to embrace a strange religion and join in the worship and ceremonies of another church" then "men are not in these cases obliged by that law against their conscience" for "obedience is due in the first place to God, and afterward to the laws".<sup>32</sup> What Socrates and Locke recommended was what we now describe as 'civil disobedience'. This expression had not come into existence at that time. It was Thoreau who coined the term in the 19th century. Gandhi distinguishes his position from Thoreau's thus:

The expression was, so far as I am aware, coined by Thoreau to signify his own resistance to the laws of a slave State...But Thoreau was not perhaps an out and out champion of non-violence. Probably, also, Thoreau limited his breach of statutory laws to the revenue law, i.e., payment of taxes. Whereas the term Civil Disobedience as practised in 1919 covered a breach of any statutory and unmoral law. It signified the resister's outlawry in a civil, i.e., non-violent manner.<sup>33</sup>

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32. *ibid.*

33. see Kumarappa, pp. 3-4.

Thoreau practised it and advocated it, yet it did not have that wide and extensive a use in his hands as it was to have in Gandhi. In Thoreau's time it did not get much practical momentum and adequate support from public corners. Aunt Maria Thoreau paid the tax on behalf of her nephew, who though irritated, was released. Later on, throughout his life, somebody else paid his tax to save him from imprisonment, though it did not develop into a major movement in the guidance of Thoreau, yet he definitely laid the foundation of contemporary civil disobedience. When Gandhi read his essay in South Africa he was deeply moved by it and as a result published it in the Indian Opinion. It is doing injustice to Gandhi's position to say that he was not aware of 'civil disobedience' before he read Thoreau. Satyagraha as civil disobedience was already launched in South Africa, before Gandhi read Thoreau's essay. It rather endorsed his ideas concerning civil disobedience. Indeed, Gandhi discovered a wider term 'satyagraha' which includes 'civil disobedience' and also transcends it, as the latter is the part of the former. For Gandhi, satyagraha became a pursuit as well as a method to fight injustice and to make social change possible in a

peaceful way. He developed it as a systematic doctrine with all its necessary ingredients. He devoted much time to clarify conceptual confusions.

To state in brief the results of our discussion so far, we may now say that Socrates, Locke, Thoreau and Gandhi all admit that there is a higher realm from which flow obligations for the individual(s). For Socrates, it is the 'voice of God' or 'obedience to the command of God' which obliges him to set aside the command or law of man (men), in case the latter is in conflict with the former. Locke and Thoreau call it 'conscience'. Locke's use of the term 'Reason' should mislead nobody. It is not pragmatic reason or prudence of Hobbes, but rather Reason which is a faculty given by God by which men may discern values and obligations higher than those of mere prudence and petty self-interest. Thus, it is akin to 'Conscience'. Gandhi called it 'Truth' or 'God'. For all of them this life is superior though it presupposes political life as a necessary though by no means a sufficient condition for the realisation of this higher life. Thus whenever a conflict appears between the two, all of them advise peaceful disobedience of a particular law and acceptance of punishment. Except Locke, all three themselves underwent punishment for disobedience of law.

## CHAPTER V

### THE CRITIQUE OF CIVIL DISOBEDIENCE

Disobedience of law may be 'political' or 'non-political'. Concepts, such as, 'rebellion', 'revolution' and 'civil disobedience' point to behaviour which falls under 'political disobedience', whereas 'robbery' and 'theft' point to cases of 'non-political disobedience'. In most cases, we can assume, robbers are interested in looting money and property of others. In doing so they break certain laws. The question of their consideration of the justice or injustice of the laws does not arise. However, as we have seen in the preceding discussion, the civil disobedient engages in committing breaches of law from entirely different considerations. From the point of view of a civil disobedient, the crucial considerations are the justice or injustice of the law, its moral character, its role in promoting or doing harm to public good. The civil disobedient violates the law, which makes his act illegal. But this sort of act differs from

the illegal acts committed by robbers and thieves, not only in aims and methods but also in the fact that the latter commit their acts in concealment, whereas the former commits his act of disobedience in public. As the civil disobedient wishes to redress an unjust law and bring about a change in/of such a law, he gains nothing by acting in private. Rather, by making his acts public he brings to the attention of the government as well as the public at large, the injustice and undesirability of the law, he is contending against. In this way he hopes to rouse the conscience and good sense of the people, so that his actions draw greater and greater support from the public. The greater the popular support he enjoys, the harder it is for the government to ignore his dissent. Thus the civil disobedient differs radically from another kind of dissenter, the rebel or the revolutionary. The latter mistrusts the entire governmental apparatus of the society of which he is a member and thus wishes to overthrow it completely, whereas the civil disobedient is very much a member of the society and the state, and acts to bring about changes within the given framework. He is a political reformer in the sense that he does not aim at violating all laws, but only those which he



judges to be unjust or immoral. The dissent may be pointed against an unjust law or against some policy of the government which gives birth to such a law. The policy of segregation for instance generates the law of segregation. However, some laws are protested because they are thought to be unjust in the sense that they violate the rights possessed by all men, still others because they are held to produce effects contrary to public good. The act of disobedience continues till the unjust, immoral or harmful law is changed. When a regime as a whole becomes unjust and tyrannical, and is considered beyond redemption, the time is ripe for a revolution.

Socrates engaged in civil disobedience against those laws which curtailed an individual's freedom of speech. Thoreau engaged in civil disobedience by refusing to pay the taxes on the ground that such tax money contributed to the maintenance of such institutions of the government which supported the immoral institution of warfare and slavery. Gandhi resorted to Civil Disobedience in India as well as abroad. He waged the war of civil disobedience in Champaran where the laws required the farmers to plant three out of every twenty

parts of their land with indigo for their landlord.<sup>1</sup> This worked a great hardship on the poor farmers, and Gandhi undertook a campaign to change such laws. Similarly, the Vykon Temple Road Satyagraha was done against the segregation policy of the government.<sup>2</sup>

The fact of a law being constitutional<sup>3</sup> or unconstitutional does not seem to make much difference to the position of a civil disobedient. A law is 'constitutional', that is, it is in accordance with the spirit of the constitution when it does not violate any of the basic rights provided by it. A law may be constitutional in this sense, but yet 'unjust' from moral point of view. In such a case, there is an adequate ground for the doing of civil disobedience. However, if the law is 'constitutional' but 'just' from moral point of view, no problem for civil disobedient will arise. Again, if it is 'unconstitutional' but 'morally unjust' there is sufficient ground for committing civil disobedience. But if it is

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1. see AUTO., p. 298.

2. For details of various satyagraha campaigns see J.V. Bondurant's Conquest of Violence, University of California Press, 1965, pp. 45-102.

3. Wasserstrom, R.: "Disobeying the Law" JOP. 1961, p. 647.

'unconstitutional' but 'morally just' then on our account of civil disobedience, no possibility for such disobedience will arise. In brief, whether the law is 'constitutional' or 'unconstitutional' is not of much relevance, but it is much more relevant whether it is 'just' or 'unjust'.

On what ground, is the 'justice', or 'injustice'; 'morality', or 'immorality'; and 'goodness', or 'badness' of a law judged? The question of the grounds on which the 'justice', 'injustice', 'morality' or 'immorality' etc., are judged of a law is a vexed one. As we have seen in the cases of Socrates, Locke, Thoreau and Gandhi, 'voice of God', 'reason', 'conscience' or 'Truth' play an important role in deciding the injustice or immorality of a law. Civil disobedience is viewed as a conscientious act, that is, it is proposed to be justified by an appeal to the incompatibility between the individual's spiritual or moral convictions and the political circumstances.

'Conscience' according to Joseph Butler is a 'capacity for reflection': "We have a capacity of reflecting upon actions and characters ... and on doing this we naturally and unavoidably approve some actions, under the peculiar view of their being virtuous and of good desert, and disapprove others, as vicious and of ill desert."<sup>4</sup> It might be held that individual consciences differ but this sort of difference does not rule out civil disobedience, **when** some one has decided some action to be right on grounds of his conscience, then that constitutes sufficient ground for the doing of that action. But this is not to say that the person claims infallibility to his judgement, Further, it could sensibly be said that no one holds such moral convictions that would rule out civil disobedience in all possible circumstances. Again it is highly improbable that such laws are passed which offend no individual(s).

Civil disobedient being a human being does not attribute infallibility to his judgement. Being a citizen he accepts the legal system as a whole. **His**

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4. As quoted by Austin Duncan-Jones in Butler's Moral Philosophy, Penguin Books, 1952, p. 69.

act of disobedience is totally different from the act of a rebel or revolter, as the latter want to eliminate the entire legal system, whereas the former is concerned only with particular law, which he judges to be unjust. Being a citizen he cherishes high degree of respect for law and order, and as he is not an overthrower of law, he willingly accepts the penalty for his act of disobedience. The 'civil'<sup>5</sup> character of civil disobedience supports and is supported by these features. The chambers's Dictionary defines 'civil' as 'pertaining to the community or to a citizen, having the refinement of city-bred people, polite, pertaining to ordinary as opposed

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5. Cf. Gandhi, M.K.: "Experience has taught me that civility is the most difficult part of Satyagraha. Civility does not here mean the more outward gentleness of speech, cultivated for the occasion, but an inborn gentleness and desire to do the opponent good. These should show themselves in every act of a Satyagrahi.", AUTO., p. 322, and also Bedau, H.A.: "The pun on 'civil' is essential; only non-violent acts thus can qualify." in "On Civil Disobedience", JOP., 1961, p. 656.

For a contrary view see, E.H. Madden and P.H. Hare's "Reflections on Civil Disobedience", JVI., Summer 1970, pp. 84-85.

to military or ecclesiastical life, (law) relating to actions or suits concerned, not with crime, but with private rights and the remedy of injuries other than criminal.<sup>6</sup>

In Law the word 'civil' originally pertains to the members of a civitas or free political community and is thus used in modern times to distinguish the rights of the free citizen against the claims of public policy. It is also used in contra-distinction to 'military' or 'ecclesiastical'.

Madden and Hare wish to reject the 'polite' sense of 'civil'. They seem to argue that this is the sense accepted by M.K. Gandhi, but everyone should not be bound to accept what he says about 'civil'.

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6. Chambers's Compact English Dictionary, Ed. by A.M. Macdonald, London: W & R Chambers, 1963, p. 107.

They say:

Admiration for Gandhi's views (is)...  
not a good reason for making these ...  
views only more or less closely  
related. Such admiration is also not  
a good reason for overlooking the histori-  
cally relevant use of the adjective  
'civil'. Thoreau ... did not imply that  
American Government was distinctive in  
its courteousness.<sup>7</sup>

However, in this they are wrong. Gandhi  
neither wished nor claimed that this is the only  
sense of 'civil'; nor he was ignorant of the other  
senses of this adjective. The point is that in the  
given context, it is the most appropriate one. Let  
us see which of the definitions given above is most  
appropriate to 'civil' in 'civil disobedience'. It is  
no doubt true that a word has different meanings. How  
do we assign particular meanings to it? We assign  
particular meaning only according to the context in  
which the word is used. If the word is used, for  
instance, in the contexts of 'suits' in a court of law,  
it can never keep its 'polite' sense. In this context,  
to give other sense to this word would scarcely

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7. See E.H. Madden and P.H. Hare's "Reflections  
of Civil Disobedience", JVI., Summer 1970,  
pp. 84-85.

make sense. Similarly if we say that civil disobedience is disobedience 'pertaining to a community', or 'to a citizen' then it will give it too wide a sense, as all disobedience 'pertains' to a community or to a 'citizen'. In this sense, all disobedience is 'civil' because it is done by the members of a community or by citizen(s). In brief, giving other senses to the adjective 'civil' in the phrase 'civil disobedience' trivialises the whole issue and distorts the entire picture. It would, in other words, be devoid of sense to say that 'civil' in Indian Civil Service' means 'polite'. Hence, the only sense which can intelligibly suit the given context is 'polite', even though it can never be the only sense of 'civil'. In this connotation, it goes with 'non-violence' as contrasted to 'violence', making it civil disobedience in the sense that it is non-violent disobedience by the people who are otherwise law-abiding citizens.

Civil disobedience is a protest against the unjust law of the government. No effective protest should start with violence. As far as force is concerned, the government has at its disposal



much vaster reservoir than the individual can hope to muster. Thus if his dissent takes the shape of a violent protest, the handful of civil disobedients are bound to lose. Besides, by using violence, the civil disobedients render their conduct much less defensible in the eyes of the public. As the majority of the people care all too much for their small comforts and material security, they are likely to reject violent dissenters as a threat to peace and security. The civil disobedient would thus lose a major source of his moral strength.

We have already seen that the civil disobedient does not reject the state as a whole, nor does he intend to create such conditions in which the disregard for law is rampant. From this point of view also, he shuns violence. Clearly, violent disobedience of law involves and is likely to lead to increasing disregard of law. Indeed, violence is objectionable as in most cases it would involve the suspension of those very values, namely, life and liberty, peace and justice, for the preservation of which political society is instituted. In fact, one will not be far from

The question, however, arises as to what 'non-violence' is and how it is to be distinguished from 'violence'. One way in which we could enhance our understanding of the distinction would be to take up the age-old distinction between 'intrinsic' and 'extrinsic' values. It is a distinction with a respectable history. Something is an 'intrinsic' value if and only if its value (quality) attaches to it by itself, regardless of its being conducive to some other end. In other words, something is an 'intrinsic' value if and only if it is an end in and by itself. Having accepted it as 'intrinsic' value, we cannot significantly ask about it: Why, or for what purpose ought we to pursue this?, although we may be required to demonstrate its intrinsic character. As contrasted with 'intrinsic' values, the 'extrinsic' values are those which are values in so far as they serve as means for the realisation of some other value. Whereas non-violence has been and can be advanced as an 'intrinsic' value, it will be rare to find instances of violence being recommended as having in themselves 'intrinsic' value. At most, violence may be recommended in some cases as a

useful device to achieve some other ends which are values in and for themselves. It may well be true that some situations are so decrepit that nothing short of violence and revolution is needed, or will work. However, as has been emphasised in this work, such situations are beyond the purview of civil disobedient action. In the typical situations in which civil disobedience is resorted to, violence can play only a detrimental role.

It would seem that no one ever held the view that a state violence, whether overt act or as a mental state of hatred is conducive to general happiness. Violence whether as an overt action or as a state of mind involves disharmony, tension and conflict but these are not the final states where one could rest in satisfaction. Institution of violence rather involves the negation of those very values for the achievement of which a political society is instituted. According to W.R. Miller,

Pure unrestricted violence in its most extreme form is utter chaos, not simply an absolute negative but the negation of order, purpose and creativity: the antithesis of wholeness.<sup>8</sup>

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8. Non-violence: A Christian Interpretation, London 1964, p. 33.

'Violence' involves the use of 'force', though the two are not identical. For instance, a surgeon operating on a patient uses force, but he can scarcely be said to be doing violence to him. But if the same surgeon, after accepting some illegal gratification, kills the patient while performing an operation then the 'force' which he employed was a violent force. Similarly, a hatred which does not issue out in an act of violence is not non-violence. The essence of violence then it may be said is hatred and ill-will; the essence of non-violence is love and good will.

In the Republic, Socrates argued against Polemarchus' thesis that justice consists in helping friends and harming enemies. Socrates argued that to injure a man is to make him a worse man. He in the end concludes that harming the enemy cannot be a just act. Further, in Crito, we find him overcoming evil by good, injustice by justice and wrong by right. Plato in these dialogues is trying to bring our attention to the truth that it is by non-violence, cooperation and harmony that men can live peacefully and make life worth living,

as against violence which brings the very opposite of it.

In the Indian tradition, the word 'ahimsa' expresses an ancient Hindu Jain and Buddhist precept. The negative prefix 'a' plus 'himsa' (loosely meaning injury), make up the word which is usually translated as 'non-violence' in English, yet 'ahimsa' is more than a negative notion as is clear from the case of Buddha and Buddhism where 'ahimsa' connotes not merely 'non-injury' but also refers to great love and great compassion for all creatures. Etymologically, 'himsa' is the derivative form of 'han', meaning to kill or to damage so that 'himsa' means to wish to kill or injure or hurt. 'Ahimsa' then connotes the renunciation of the will to kill or injure, that is, we cannot practise non-violence unless our will turns out to be a GOOD WILL towards all creatures. In modern times, Gandhi would like to put it thus: "Not to hurt any living thing is no doubt a part of ahimsa...The principle of himsa is hurt by every evil thought, by undue haste, by lying, by hatred, by wishing ill to any body...it is not merely a negative state of harmlessness but it is

a positive state of love, of doing good even to the evil doer."

Thus non-violence rules out not only the overt cases of violence<sup>9</sup>, such as murder, rape, riots, beating stoning etc., but also more subtle kind of violence, such as getting things done by creating fear in the minds of other men. In fact its scope is as vast as the ocean: it excludes ill-will as such.

A man who hurts somebody and experiences remorse, accepts his guilt and atones for it, perhaps moves on the road to non-violence than a man who

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9. Bernard Gert takes ten moral rules in an attempt to analyse the concept of 'violence'. The rules are:

1. Do not kill.
2. Do not cause pain.
3. Do not disable.
4. Do not deprive of freedom or opportunity.
5. Do not deprive of pleasure.
6. Do not deceive.
7. Keep your promise.
8. Do not cheat.
9. Obey the law.
10. Do your duty.

and defines an 'act of violence' as 'an intentional violation of the first five rules!'. in "Justifying Violence", JOP. 1969, p. 617. Indeed, some one can attempt to define 'violence' as the 'violation of all the ten moral rules' but it would be to distort the concept. In such a case there can be nothing like non-violent disobedience and it will hardly be possible to conceive of 'non-violence'. A satyagrahi can stick to all except 9 above.

cannot injure any man because of the unavailability of the means, but who does breed heinous tortures on man in his imagination. The latter, if he materialises his thoughts is likely to indulge in great acts of violence indeed. For this reason the great proponents of non-violence, like Gandhi, have recommended non-violence not only in action but also in word and thought. In its superficial view, it may be considered to be no more than a mere abstention from the use of physical force, but in its highest form it is used to indicate not only the absence of anger and ill-will but the presence of good will. In this of course, there is endless scope for growth. Indeed, Gandhi said of a satyagrahi that he is a person who is "continuously growing in truth, love and non-violence. However, far one may have grown in these respects, he ceases to be a satyagrahi if he stops growing and becomes static".<sup>10</sup>

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10. As in Santhanam, K.: Satyagraha and the State, Asia Publishing House 1960, p. 10.

We hope to have shown by now that the position which Madden and Hare adhere to by holding that the defiance in civil disobedience may be either 'violent' or 'non-violent' is inconsistent with the aim, spirit and method of civil disobedience. One reason why Madden and Hare reject non-violence as essential part of civil disobedience is the supposed difficulty in drawing a 'precise dividing line' between 'violence' and 'non-violence'. However, even though there may be some borderline cases where a decision would be difficult, and even though a universal precise dividing line may not be available, yet from it, it does not follow that in actual practice there are unsurmountable difficulties in separating the two. In practice, everybody can and must decide for himself what is violence and what is not, that is, if the person concerned judges some action to be involving violence, he ought to renounce it. Besides, for Madden and Hare, "...the violence must be planned, minimized and controlled for maximum effectiveness..."<sup>11</sup> However, is it possible to plan

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11. see foot-note '7' in this chapter.



the intensity of violence? Is not violence by its very nature such that once allowed it spreads like wild fire making all talk of its control and minimization merely empty words?

This analysis enables us to take a definite perspective on civil disobedience: Civil disobedience is an illegal, public, non-violent and conscientious act committed to change what is considered to be the unjust laws or policies of the government.<sup>12</sup>

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12. For other definitions of civil disobedience see: i. H.A. Bedau, "On Civil Disobedience" JOP., 1961, p. 661; ii. R.H. Weingartner, "Justifying Civil Disobedience" published in Bierman and Gould, p. 202; iii. D.V. Morano, "Civil Disobedience and Legal Responsibility" JVI., Summer 1971, p. 192; iv. M.L. King, "Letter From Birmingham City Jail" CDTP., pp. 78-9; v. Rex Martin, "Civil Disobedience" Ethics, 1969-70, p. 126; vi. Anthony De Crespigny, "The Nature and Methods of Non-violent Coercion" Political Studies, 1964, p. 263; and vii. Christian Bay, "Civil Disobedience: Prerequisite for Democracy in Mass Society" published in Political Theory And Social Change, edited by David Spitz, N.Y. 1966, p. 166.

Civil disobedience could be committed in a 'positive' or 'negative' way. We can disobey by not doing something government wants us to do, and by doing something government prohibits us to do. Some philosophers divide it into 'direct' and 'indirect'.<sup>13</sup> But these issues are not of much relevance. Since civil disobedient breaks law(s), he is likely to be arrested. The civil disobedient, as a law-abiding citizen surrenders willingly to the penalties for the act of his disobedience.<sup>14</sup> He accepts punishment because neither he is a dacoit, nor an overthrower of law nor an anarchist.

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13. See Bedau, H.A.: "On Civil Disobedience" JOP., 1961, p. 656-59.

14. Cf. Taylor, W.L.: "One aspect of civil disobedience has already been alluded to-a willingness to accept the penalty." in CDTP. article entitled: "Civil Disobedience: Observations on the Strategies of Protest" p. 99; also see S.M. Brown's "Civil Disobedience" JOP., 1961, p. 676 and lastly, Martin Luther King: "One who breaks an unjust law must do it openly, lovingly...and with a willingness to accept the penalty. I submit that an individual who breaks a law that conscience tells him is unjust, and willingly accepts the penalty by staying in jail..." in "Letter From Birmingham City Jail" published vide CDTP., p. 78.

We are now in a position to make some conceptual clarifications. We can start with 'rebellion'. 'Rebellion',<sup>15</sup> in the sense of active resistance to establish a different and better sort of authority is a phenomenon as old as political society. It involves illegal activity as there can be no legal right prescribed by the constitution to disobey the law of the land. Such a constitutional right as has been discussed previously is a contradiction in terms. Further, rebellion is done to overthrow the existing system of the government.

According to the Oxford English Dictionary, the English word 'revolute' comes out from the Latin word 'revolut-us'. 'Revolution' is a noun from it and is used in many different contexts. However, some of the relevant usages are the following:

1. (a) the action or fact on the part of the celestial bodies, of moving round in an orbit; an epoch, a turn;
- (b) time in which a heavenly body completes a full course;

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15. Cf. 'Rebellion', The Encyclopaedia of Religion And Ethics, edited by J. Hastings, V. X, pp. 598-9.

- (c) a turn or twist, movement round an axis;
- 2. the action of turning over in mind, consideration, reflection;
- 3. (a) alteration, change; and  
(b) a complete overthrow of some established authority in any country or state by those who were previously subject to it, a forcible substitution of a new ruler or form of government.<sup>16</sup>

The word could be used in various contexts, but the notion of 'change' seems primary to all usages. Here, we can make a two-fold distinction: There could be a sense of 'revolution' which characterises a change in our ideas, in a certain discipline or in an era. For instance, in philosophy we talk about what is called a 'Copernican Revolution' which symbolises a particular sort of change in Kantian era. It is obvious that 'violence' can never a characteristic of such 'revolutions'.

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16. The Oxford English Dictionary, V. VIII, Oxford 1933, p. 617.

Secondly, there is a sense of 'revolution' in which a violent overthrow of a pre-established government is brought about. It involves an illegal activity, being a particular type of disobedience. In overthrowing the existing government, violence plays a major role. History bears an evidence to this fact. Though there is no necessary connection between both these connotations, but the advocates of both could be designated 'revolutionaries'. Consequently, there could be two types of revolutionary activity: One could be described to be an 'intellectual revolutionary' if one brings about a remarkable change in some particular intellectual field. As pointed out previously, Kant was an intellectual revolutionary in philosophy. The revolutionary as economic man is engaged in economic activities designed to lead to an organisation of society in which poverty, forced labour and the resulting distinctions of social status are required to be eliminated. Karl Marx could be described to be such a revolutionary. The ethical revolutionary is engaged in an act of rebellion against injustice while attempting to acquire and maintain respect for

the dignity of all men. The spiritual revolutionary is interested in the activity of freeing himself from worldly determinations and opening himself in love to others.

Revolutions of the political type which involve forcible interventions either to replace government<sup>17</sup> or to change the process of government by another one are not too uncommon. A few have been followed by wide-spread social change and thus earn the title 'great revolutions'. The popular view of 'revolution' is that it is simply a form of governmental change through violence. The 'revolution' can be compared and contrasted with 'rebellion'. The rebellion is successful only when the rebellious party is stronger than the existing government. If, however, the existing government is strong enough to suppress the rebels, there would be no revolution. Or to put it differently a successful rebellion results into a revolution.

17. Cf. Kamenka, E.: "Revolution is a sudden sharp change in the social location of political power, expressing itself in the radical transformation of the process of the government, of the official foundation of sovereignty or legitimacy and of the conception of social order." in "Revolution", published vide Bierman and Gould, p. 381.

revolution. Endorsing such a distinction, J.T. Brady remarks: "Rebellion indeed appears on the back of a flying enemy; but revolution flames on the breast plate of a victorious warrior."<sup>18</sup> Thus rebellion and revolution both aim at overthrowing the existing government and the means they employ are also the same.

Now we are in a position to distinguish between 'rebellion' and 'revolution' on the one hand and 'civil disobedience' on the other. All the three involve illegal activity. The former two aim at the overthrowing of the government, whereas the civil disobedient works within the given framework of the government. The first two may desire a better sort of government or no government (as in Karl Marx), but the civil disobedient cannot be an anarchist as the

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18. "How and When it is Proper to Revolt?" published in Bierman and Gould edited Philosophy for a New Generation, Macmillan 1970, p. 202.

presence of a government is a necessary presupposition for civil disobedience. Both rebellion and revolution are violent in essence, whereas civil disobedience is inevitably non-violent. The rebel or the revolutionary may desire the redress of a governmental system as a whole whereas the civil disobedience is only concerned with the redress of some particular laws or policies which offend the civil disobedients as individuals. In brief, both are different in the end they aim at and also in the choice of ends which they adopt to pursue their respective ends.

We can also distinguish 'civil disobedience' from 'satyagraha'. The latter is a wider term as it includes the former. It is a spiritual pursuit as well as a way of life, intending to eliminate injustice from political and non-political spheres. Summarily, 'civil disobedience' is a particular type of satyagraha in the political realm. Non-violence is an inevitable characteristic of satyagraha and civil disobedience being a particular type of satyagraha is essentially non-violent. But the non-violence which characterises a satyagrahi should pervade his whole personality. If it is merely shown in action



while the heart and mind are dominated by evil intentions, it remains a mere treachery. It is clear from the foregoing that non-violence should be considered as an inevitable characteristic of civil disobedience though it need not imply the acceptance of the religio-spiritual view of Gandhi. Thus on this analysis, any time the dissenter resists the government by destroying property, endangering life and indulging in rioting he is not committing civil disobedience.

## CHAPTER VI

### JUSTIFICATION OF CIVIL DISOBEDIENCE

'To justify' according to the Chamber's Dictionary is 'to prove or show to be just or right, (of circumstances) to furnish adequate grounds for, to corroborate' etc. The common meaning of 'justify' is 'go give reasons'. There is a sense in which we may be said to give reasons in 'explanation' also, but there is a distinction between the two, which ought to be kept. It makes little sense to seek or offer justifications for natural happenings, that is to say, normally it makes no sense to ask, "How do you justify the earthquake...?", but we can sensibly and intelligibly ask, "How do you justify the Indian War in Bangladesh?" In the former case, what is wanted is an 'explanation' which could easily be given in terms of the various causes that give rise to earthquakes. In the latter case, what is wanted is a 'justification' which cannot be given solely in terms of causes of war.

'Justifications' are not offered in a vacuum; they are made by people to other people. The notion of 'justification' assumes and embodies that we are dealing with beings responsible for their actions, who can be asked to tell us why they followed one course rather than the other. However, not all human behaviour requires 'justifying'. For instance, the question of justifying such normal activities as falling in love, staying healthy, taking dinner, cultivating friendship, does not arise.

'Justification' could be demanded in various contexts. We can ask for the justification of the assertion of some conclusion. The demand for justification here requires one to produce the premises and the various rules of inference with the help of which the conclusion is reached. This is giving justification in a logical context, whereas justification for Indian War in Bangladesh refers to an entirely different context.

We need to justify only (the seemingly) unreasonable, irrational, or censured behaviour<sup>1</sup> of

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1. Cf. D'Arcy, Eric: Human Acts: An Essay In Their Moral Evaluation, Oxford at the Clarendon Press 1961, p. 124.

some person. For instance, it seems *prima facie*, irrational to murder one's own wife, and consequently such an act requires some justification. Similarly, when somebody breaks a law, *prima facie*, it is unreasonable and censurable behaviour and needs a justification. We give justification for something only when we think or expect that someone will think that it needs justification. For instance, the award of punishment is in need of justification as it imposes deliberate suffering on man. Here we may be persuaded to argue that it is right on retributive, deterrent or reformative basis.

The notion of 'justification' will be further clarified if we compare and contrast it with 'explain' and 'excuse'. 'To explain' an act is to locate and present its cause. This may be discussed in terms of the motive of the agent. Such explanation could also be asked for in the context of natural happenings. To say an act is 'excused' is to say that the act is wrong but the agent is not held responsible because of the particular circumstances in which he was and therefore he is not pronounced guilty. For example the plea of insanity may serve as an excuse

in a murder case, but the plea of necessary self-defence may also be made. In the latter case, the act is not 'excused' but 'justified'.<sup>2</sup> When a justifying circumstance is present, the act is viewed as good or at least permissible; when a merely excusing circumstance is present the act remains objectively immoral. To say that an act is justified is to say that had that circumstance not been present, it was a wrong act. The human behaviour could be 'explained' as well as 'justified' whereas natural happenings could be provided only with an 'explanation'.

Lastly, it involves an appeal to something independent otherwise it would lead to infinite regress. These independent factors for the justification of civil disobedience might be conscience, voice of reason, public good etc. They are independent factors in the sense that when some action is sought to be justified with an appeal to them, no further reason is required.

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2. Cf. Austin, J.L.: "...justifications can be kept distinct from excuses... But the two certainly can be confused, and can seem to go very near to each other..." in Philosophical Papers, Oxford at the Clarendon Press, 1961, p. 124.

Recently some thinkers<sup>3</sup> have taken the position that violation of law is never justifiable. Not only this view fails to take into account some important conceptual distinctions but it also overlooks and ignores the distinction between 'good' and 'bad' laws. One may hold civil disobedience to be unjustifiable if one defines 'justice' and 'rightness' in terms of the laws. But this position is untenable as we shall see below.

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3. For instance, Abe Fortas claims that "... it is never justifiable in a society which offers legal means of recourse... Violating a justifiable law constitutes an act of rebellion not dissent.", in Concerning Dissent And Civil Disobedience, N.Y. 1968, p. 63. What shall we do if legal means of redressing the grievance are exhausted and justice is not achieved? In this case does it make a room for (civil) disobedience? Gandhi, for instance, resorted to civil disobedience only after he tried other methods. Again it is not clear what Abe Fortas means by a 'justifiable law'. If he means by it a 'just' law then definitely no civil disobedience can be committed in principle as the law is just. However, if it stands for that law which passes through a particular (legal) procedure, before becoming a law then many unjust laws are passed in this way and it does not follow that one should not commit civil disobedience. Indeed in such a circumstance a good opportunity for civil disobedients arises.

It could be claimed that it is never morally right to disobey law because 'morality' simply consists in 'obedience to law'. This defines 'right' in terms of 'what the law says'. This identification of 'law' with 'morality' will make it redundant to evaluate a law. We make distinctions between 'just' and 'unjust' laws, morally 'justifiable' and 'unjustifiable' laws, 'good' laws and 'bad' laws.<sup>4</sup> It is nobody's moral obligation to obey a 'bad' or 'immoral' law. No moral man, in other words, is obliged to obey an immoral law, that is, he cannot have an unconditional obligation to obey the law. The fact that people do obey them sometimes owing to fear, punishment etc. does not imply that they cannot, or that they would not be right if they did violate such laws.

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4. Cf. King, M.L.: Letter, CDTP., pp. 77-78; and also Hart, H.L.A.: "We think and talk about 'justice according to law', and yet also of the justice or injustice of the laws.", The Concept of Law, Oxford University Press, 1961, p. 7, and Austin, John: "The existence of law is one thing, its merit or demerit is another.", The Province of Jurisprudence Determined Humanities Press, 1965, p. 184.

Though it is not possible to think of an analytic relationship between 'law' and 'morality' but hardly anybody will dispute the claim that there is a close relationship (except in tyrannies, dictatorships or the like) between the two in the sense that the laws and the constitution of a society are viewed as embodying the collective moral norms of its citizens. The development of law in many societies is deeply influenced by the accepted morality of its subjects. For instance, laws in the antiquity of India were highly influenced by varnashramadharma, but nowadays laws mirror a different sort of morality by ~~eliminating~~ casteism. Though laws are said to mirror the moral norms of a people but this neither obliterates the distinction between the two nor does it establish an analytic relationship. That is to say the link between the two is only an empirical one and not necessary. In democracies, for instance, not every law can be said to embody the moral norms of a people. Further, in tyrannies, and dictatorships laws are nothing but the carriers of the whims and crazes of the rulers. In such regimes, it may not at all be a carrier of moral norms of people. Thus



it cannot be held that all law is the carrier of morality and disobedience of law is wrong. Again even when the constitution tries to embody the moral norms of a people, it can never proclaim to have exhausted the whole of citizens' morality, as this sort of actualisation is an impossibility in the sense that the state consists of people belonging to various clans and religions and it is very difficult indeed to make such laws which do not offend the moral norms of a people.<sup>5</sup>

As law cannot exhaust the whole of the moral norms of people its scope is rather narrow. It is always possible to evaluate,<sup>6</sup> scrutinize and question law in terms of this wider morality. Further, laws can never by themselves provide the criterion for their own evaluation. To put it differently, they can provide with a criterion for testing their legal efficacy, but that is not adequate. In such cases,

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5. Cf. Mahajan, S.N.: "Justifiability of Civil Disobedience", Proceedings of the Indian Philosophical Congress, 45th Session, April 1972, p. 11.

6. See foot-note 4.

violation of laws which are immoral or unjust, can in principle be justified.

Individuals and their groups and societies may have views as to what is right and various 'rights' may collide. Accordingly, it could be said, no one is ever justified in disobeying the law on the grounds that the law is wrong, for who can say what is right. The Right here assumes the knowledge of 'right' in an absolute sense. But can we not pronounce actions or laws to be 'right' or 'wrong' without knowing the RIGHT? Further, the lack of an institution for determining what is right once and for all is not a sufficient ground for failing to do what one thinks right. It is granted that what one thinks right, may not always turn out to be so but it is hard to imagine that there will ever be a universal institution for deciding 'right' and 'wrong'. One cannot therefore suspend judgement as well as action on grounds of fallibility.

It could be alleged that having given allegiance to a political authority and a legal system, one has ruled out for himself disobedience as a positive course of action. But to hold such a

view would be a mistake. It is not the case that the acceptance of a political authority removes all possible grounds for disobeying the law enacted by it or even that it removes all justifiable grounds. For what does 'accepting' a legal system mean? Does it mean unconditional obedience to laws? Or does it indicate only the 'general acceptance' of a legal system?

While discussing Socrates, we have already established that such an agreement, viz., to obey law unconditionally is indefensible on moral grounds. It requires of the individual an unquestioning obedience to the commands of the government even in the cases where such a compliance would amount to his acquiescing in, or contributing to perpetration of a course of action which is detrimental to the public good, and/or unjust and immoral. As such no moral man can be a party to an agreement which curtails his choice and judgment so severely.

Nor is there any substance in the claim that from the fact that one has stayed in a state for a certain duration of time and has thus enjoyed the benefits of a citizen, it follows that one has acquired an obligation to obey all its laws unquestionably.

This point has also been taken up in detail in our discussion of Socrates. By disobeying the law and willingly accepting the penalty, Socrates gave a profounder connotation to the duties and obligations of a good citizen. It is a simplicitic notion of a 'good citizen' which insists on an unquestioning obedience of even unjust laws. Citizens who do not acquiesce in state orders indiscriminately but who keep their critical moral faculties active and who are courageous enough at risk to their own self to protest against the government are the most valuable asset of a country. They help keep the moral tenor of the state and are a bulwork against its rapid degeneration.

It has been held that obedience is the very part of the concept of law<sup>7</sup> and hence civil disobedience is never justifiable. According to this view, the obligation to obey the law flows from the very concept of its being a law. According to T.D. Weldon, if a

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7. see Weldon, T.D.: The Vocabulary of Politics, Penguin Books 1955, pp. 56-7; and also Macdonald, M.: "The Language of Political Theory", Language and Logic, first series, edited by

person poses a problem like, "Even if it is a law I do not see why I should obey it" the only further comment possible is, "Well, this is Great Britain, isn't it?" Similarly, Margaret Macdonald acknowledges that the general question of the basis of political authority is the most fundamental question of Political Philosophy and yet goes on to say that, "Why should I obey any law, support any government; acknowledge the authority of any state...is a senseless question."

It is further supported by the fact that one cannot understand the concept of law without reference to obedience on the part of those who are subject to it. It is part of the meaning of law (as a command) that it claims obedience. However, if we accept this view, then this will rule out not only all disobedience as unjustified but there will also be no need for giving any justification of political obligation. There is a lot of confusion here. 'Command' and 'obedience' are closely related is beyond doubt. 'Commands' are capable of being obeyed or disobeyed. It may be strengthened by the fact that when these commands issue from a legitimate authority, they make claim on the individuals for obedience. But this cannot be an absolute claim

for absolute obedience. In other words 'obedience' alone cannot be a part of the concept of 'command'. They can also be disobeyed if there is a sufficient reason for disobedience. What it amounts to saying is that a justification in case of disobedience is required; not that it can never be given.<sup>8</sup>

Recently the issue whether we can have a right to civil disobedience has immensely drawn the attention of philosophers. Can we have a right to civil disobedience? We can talk of 'moral right' and 'legal right'. In the latter context, a right to something involves the claim that others will not interfere in the performance of an action or in the use of an object. To claim a right to civil disobedience in this sense is to claim that any and all actions which can properly be called cases of civil disobedience need no interference by the government or by other individuals and therefore no justification is required. But it follows from the definition of civil disobedience as an illegal act that no legal right to it can exist.

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8. S.N. Mahajan, *ibid.*, p. 13.

If the legal system permits a general disobedience of laws then by disobeying them we cannot be said to be disobeying as such a disobedience is permitted by law. This leads to a contradictory situation where a case of disobedience is also a case of non-disobedience. Consequently, a legal system which granted a right to perform illegal actions would thus afflict itself with self-contradiction. Thus if conscientious objection to war is granted by a government and the individual is able to establish himself as a conscientious objector to the satisfaction of the government, his refusal to go to war on this count would not constitute an act of civil disobedience. Nor does civil disobedient's willingness to accept the punishment by which he demonstrated his deep regard for law give him a right to disobey laws. In fact, his acceptance of penalty already demonstrates that he does not have such a right. My having a right to do something must entail that others have a duty to allow me to do something.

The term 'right' is also used in the sense of 'morally justifiable'. However, 'legally right' and 'morally right' must be kept apart. One can reasonably and intelligibly say that some action 'a' is justifiable,

that is to say that it is morally right, without recognising any (legal) right to it and vice versa. It is clear that an action may be legally right but objectionable from moral point of view. On the other hand, an action may be morally right even though it may not be permitted by the legal structure.

The upshot of the above discussion is that only confusion results from mixing these two senses of 'right'. Thus a person may be right (morally) in doing what is morally justifiable even though this does not constitute a right to disobedience as such. This does not rule out the possibility of rejecting an agent's act of civil disobedience as morally justifiable. This is possible in a case where the observer holds a different standard of evaluation. As H.B. Acton has put it: "It is logically impossible for A to justify a course of action to B, if B rejects the authorities to which A appeals."<sup>9</sup>

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9. see Acton, H.B.: "Political Justification" published in Contemporary British Philosophy, edited by H.D. Lewis, Allen and Unwin, London 1956, p. 28.



A further objection to civil disobedience stems from the claim that in so far as it involves breaches of law and order in society, justifying it would amount to encouraging lawlessness and even anarchy. We shall deal with this objection in detail in the next chapter. Here we shall merely point out that in so far as the civil disobedient does not seek to escape the punishment for his law-breaking behaviour; but on the contrary, accepts it willingly and openly, he acts responsibly and shows respect for law. As such his behaviour cannot be said to breed lawlessness much less anarchy.

The discussion above was undertaken to establish the 'justifiability' of civil disobedience. However, we have not yet established any criteria by reference to which cases of civil disobedience may be justified. To this we now turn our attention. It seems clear that there is no one single rule which will provide us with an adequate criterion of justification. The following considerations will play a major role in justification of cases of civil disobedience.

1. CONSCIENCE: We can only act on the basis of what we judge to be right, but it is advisable to take great pains to determine whether what we judge to be the case is indeed so. It is desirable to reflect carefully on all relevant factors. One is justified in doing what one thinks right only to the extent to which one is conscientious enough to determine what is right.

According to the Oxford English Dictionary, one meaning of 'conscience' is: 'consciousness of right and wrong'. A man is not consulting some private voice when he consults his conscience. If somebody's conscience forbids him to obey then he ought to disobey, and if asked 'why', he will not refer to some private illumination but to the considerations that have led him to take this decision. But once somebody has decided that he ought to disobey, he has also decided that submission to any of contrary alternatives or temptations would be wrong. Civil disobedience is a prolonged struggle and will have to be continued till the unjust law or policy of the government is changed. However, we must distinguish between a man's making up his mind what his duty is and his being tempted not to

perform it. Sometimes, a person's conscience may find it difficult to choose from the given alternatives. Nevertheless, if after careful reflection, one is convinced that in a particular case, disobedience to law is his duty then that is the course he ought to follow.<sup>10</sup>

2. PURITY OF INTENTION: If one wants to engage in civil disobedience, the act of protest must be performed on the ground that a law is judged to be immoral or wrong. Public good must regulate civil disobedient's conduct, not bias or prejudice. However, the weighing of consequences of his action is part of his considerations of public good.

3. IMMORALITY OF LAW: A factor contributing to the justification of engaging in civil disobedience would be the immorality or injustice of law against which one is protesting. For instance, most fair-minded people would find laws, which segregate or laws which

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10. Cf. Duncan-Jones, Austin: "...When, in the exercise of conscience, I recognize an action to be right, this recognition constitutes, of itself, a reason for doing the action...", Butler's Moral Philosophy, Penguin Books, 1952, p. 74; and also Thoreau: "The only obligation which I have a right to assume, is to do at any time what I think right." in CDTP., p. 78.

describe some people as untouchable, repugnant to their conscience.<sup>11</sup> By creating complexes of inferiority and superiority in the groups, such laws become inimical to the individual(s) and hamper his (their) full growth. As Martin Luther King puts it:

A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law...in the terms of Thomas Aquinas, an unjust law is a human law that is not rooted in eternal and natural law. Any law that uplifts human personality is just. Any law that degrades human personality is unjust. All segregation statutes are unjust because segregation distorts the soul and damages the personality...<sup>12</sup>

What, in other words, justifies civil disobedience is an intolerable evil.<sup>13</sup>

4. PUBLIC GOOD: What is significantly appealed to in the justification of civil disobedience is the 'common good' or 'general happiness'. Obedience or disobedience or any other disputed social decision would be justified appealing to the knowledge that one

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11. Cf. King, M.L.: "So I can urge men to disobey segregation ordinances because they are morally wrong." in CDTP., p. 78.

12. *ibid.*, p. 77.

13. Cf. N. Chomsky, CDTP., p. 202.

course rather than the other would in fact lead to the greatest happiness. It cannot be doubted that there are important disputes in the society, but they can only be dissolved by an appeal to thorough considerations of the circumstances at hand, keeping in view the 'general happiness' or 'common good'.

The word 'common' in the phrase 'common good' and the word 'general' in the phrase 'general happiness' are clearly meant to contrast in some way, with what is 'personal' or 'particular'. When individuals or groups of individuals want to justify their positions rationally and properly, they have to do away with their own 'personal' goods. In other words, 'common good' or 'general happiness' can never be reached if each actor is working solely from his self-interest. Hence, 'common' cannot refer to some range of personal interests, that every individual member of the society has. The rules determining the common good, must be rules containing the public as well as the private good. The rule could be thought of thus: "All the members of this society are together more important than any single member of it." Or to put it differently, "No individual or group within this society has a right to ignore the rights and interests of others."

5. THE TRIAL OF OTHER METHODS: This concerns exhausting all possible non-disobedient methods. The fewer the alternative recourses are available the more justified is the recourse to civil disobedience. It is also appropriate in cases where the chances of change through legal means are remote, However, we can make a distinction between having legal means of redressing the grievance and not having such means. In the latter case one is denied a basic procedural right. In cases where such a right is granted, it is incumbent on the civil disobedients that they may try these methods first.

6. HIGHER ORDER AND RESPECT FOR LAW: The practisers of civil disobedience must maintain by their conduct respect for law and order. Public and open breaches of law with a ready acceptance of penalty, which goes with such a disobedience of law, it could be said that the civil disobedient by eliminating bad and unjust laws intends to bring about a better sort of order in society, though as such he does not cherish any disregard for law or the legal system.<sup>14</sup>

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14. A complete discussion of this point follows in the chapter below.

a democratically derived law is neither impossible nor undemocratic. Legitimate civil disobedience properly exercised is a stabilizing device in a constitutional regime, tending to make it fair and just. As long as the civil disobedient acts on such principles as we laid down above, civil disobedience is not incompatible with the demands of good citizenship in a democracy. In the end, it only needs to be emphasised that the citizen does not violate the law on the ground that he opposes the governmental authority or that he denies the fundamental legitimacy of law. Here civil disobedience is directed against a specific law not against the whole system of authority or the process of enactment of laws in the system. Nor does the civil disobedient intend to replace the democratic procedures with non-democratic ones.

CHAPTER VII

CIVIL DISOBEDIENCE

AND

LAW AND ORDER

We have already dealt with the question of 'justifiability' and 'justification' of civil disobedience in the previous Chapters. There are, however, a number of related criticisms which crop up with a fair degree of persistence. These pertain to the supposed damage the practiser of civil disobedience does to the respect and maintenance of law and order in the society. In this Chapter, we propose to examine these issues in detail. The fundamental question here is whether civil disobedient promotes disrespect and even disregard for the legal system as a whole, leading to greater and more general disobedience of law to the extent that the society is brought to the brink of anarchy. In our view, the contention that civil disobedience does have any such consequence



is based on a superficial understanding of the aims and methods of civil disobedients as well as confused thinking about 'law' and 'order' and the way they are mutually related. We will proceed by considering the following questions:

1. What is 'law'? Does 'civil disobedience' disturb 'law'? If so, in what sense?
2. What is 'order'? Does 'civil disobedience' disturb 'order'? If so, in what sense?
3. What is the relationship between 'law' and 'order'? Does disturbing the one imply disturbing the other?

1. The following may be considered as a broad definition of LAW: Law is a set of rules, laid down for the guidance of an intelligent being(s) by an intelligent being(s) having power over him (them). If we believe in God and also hold that He lays down laws for his creatures, then there will be a category of such laws designated as 'Divine Laws', otherwise 'law' refers to rules laid down by some men for the regulation of men's conduct. Clearly, such laws are fundamentally different from what are generally known as 'Laws of Nature'.

'Law of Nature' signifies any verified uniformity of phenomena, which is capable of being expressed in a definite statement, and by the 'Laws of Nature' we mean the sum of such uniformities - known or knowable - in other words, the uniformity of nature as a whole. The fact that a stone falls on the ground is an instance of the law of gravity. My desire to pick it up followed by the act of picking and hurling it upward does not affect the law. Here, we talk about the laws regulating the growth or decay of vegetables, living bodies, and of laws determining the movements of inanimate bodies or masses.

When the term 'law' is applied to any other object than man it ceases to contain two of its essential qualities, viz., disobedience and punishment. A Law of Nature is obeyed because there is no room for disobedience. Strictly speaking, we cannot even talk of 'obeyed'; rather its compliance 'occurs'. On the other hand, 'human law' consists of commands addressed to voluntary agents, which they may obey or disobey and the law is not rendered null and void by being broken partially and incidentally. Natural Laws, on the other hand, are not commands but assertions respecting the necessary order of nature and they remain laws only so long as they can be shown to express that order. To speak or talk about the suspension or violation of a Law of Nature is incongruous. A Natural Law is a universal rule and as such admits of no exceptions.

Of the laws set by men to men, some are established by the political superiors. The aggregate of rules thus established by political superiors is called in contrast to the Natural Law, Positive Law or law existing by position. Here, we are concerned only with the Positive Laws.

Laws are commands and a command is a signification of a desire. The former presupposes harm or punishment in case of noncompliance. If I am not complying with the wish a command signifies, I am said to disobey the command. Commands may be of a 'general' or a 'particular' type. If I command my servant to bring vegetables from the market now, the command is 'occasional' or 'particular' but if I command him to get up at a particular hour daily, the command is of a 'general' type. The latter type of commands are rules. Laws are commands of the rule-type although that is not to say that all general commands are laws. The command of a law-giver is a general rule, or law whereas the command of a judge which comes as a consequence of the application of some law is 'particular' or 'occasional', and is not a law. However, there could be no laws without generality.

In political sphere, 'law' may be understood as the instrument or organ of the state by which the processes of the political society as a whole are instituted and carried on in a systematic and

orderly fashion.<sup>1</sup> The term 'law' is ambiguous. It might designate one particular law or a system of laws. In the previous sense, (that is, law as referring to a command) law is violated by the civil disobedient. In other words, the civil disobedient violates the law in the sense that he acts contrary to what the law as a command dictates, but this violation is not violent. Since civil disobedience is an illegal act, that is, not permitted by law, violation of law is a necessary condition for civil disobedience. As we noted above such violations of law are sought to be justified on the ground that by his act of violation of a law, the civil

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1. Cf. Thompson, S.M.: "Law is the structure of human relationships, which constitutes a society. Law is the way in which order transcends force and brings force into submission to itself." in "The Authority of Law", Ethics, (Oct.) 1964, p. 18; Hobbes, T.: "CIVIL LAW is to every subject, those rules, which the commonwealth hath commanded him, by word, writing, or other sufficient sign of the will, to make use of, for the distinction of right and wrong, that is to say, of what is contrary, and what is not contrary to the rule.", English Works, V. III, p. 251. For a detailed discussion of this issue, also see R. Pound's "Philosophical Theories of Law", published vide the Philosophy for a New Generation, edited by Bierman and Gould, Macmillan 1970, pp. 245-57.

disobedient seeks to maintain the moral tenor of the state and make it possible to achieve a higher kind of order and public good than the one achieved by an unquestioning obedience to laws even when they happen to be bad or unjust. Further, by willingly accepting the punishment for his act of disobedience, the civil disobedient demonstrates a high degree of honour and respect to the laws.<sup>2</sup> However, the civil disobedient does not seek to challenge law in the sense of the legal system as a whole. In this he differs from a revolutionary. As contrasted to a revolutionary, he accepts the legal system as a whole and only seeks to redress particular laws or policies which he deems unjust, bad or immoral.

2. What is 'order'? The Chambers's Dictionary defines 'order' as "suitable, normal or fixed arrangement, regular government, an undisturbed condition, rule, regulation or command".

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2. Cf. King, M.L.: "I submit that an individual who breaks a law that conscience tells him is unjust, and willingly accepts the penalty by staying in jail to arouse the conscience of the community over its injustice, is in reality expressing the very highest respect for law." in "Letter From Birmingham City Jail", CDTP., pp. 78-9.

'Order' is not the same thing as 'system'. What is ordered are particular facts: the 'system' is the orderly arrangement that results. The 'system' may be required to cherish and maintain another type of order. For example, the 'legal system' is a set of ordered rules which is required to maintain a different kind of order in society. 'Order' is a relation that arranges the members of a class in a certain way. Again, 'social order' is a pattern of regularity in social relationships which insures us or contributes to relative security of person and property.

There are various types of 'order' as well as varying degrees in which orderliness may be found. A work of art exhibits one type of order, a well-decorated drawing-room presents a different kind of order. We can also talk of 'natural order' or if we are believers of 'divine order', the rhythm of seasons, the orderliness in the movement of astronomical bodies, and the numerous ways in which inanimate and living things of this world operate. It staggers one's imagination to think of the chaotic nightmare that life would be in the absence of basic uniformities of nature

A distinction has been drawn between the Form, Content and the Source of order.<sup>3</sup> By Form of order we mean behaviour in accordance with certain rules. The Content consists of specific rights which order secures, for example, the prohibition of murder or theft. The Source of order is the authority or power from which it derives. 'Order' is never formal, nor its content invariably good or bad. We think of 'order' as a kind of harmony that permeates our social relationships. The first necessity not only in political life but in life as a whole is maintenance of order. Is an 'order' willed by a majority necessarily good? It may be good but not necessarily so. In fact, it may be so fundamentally bad in content as to make the good living impossible.

The notion of 'arrangement' or 'regularity' is primary to all senses of 'order'. Regularity plays a very significant role in human life, and it must not only be present but it must be maintained as well to preserve living conditions in order that

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3. see Ball, W.M.: "The Limits of Political Obligation", IJE., (April) 1931, pp. 300-1.



good and safe living is possible. Doing or refraining from doing certain things may also contribute to regularities, for example we expect others not to beat us. We can also contribute to regularity by collective doings as for example by driving on the left side of the road, by obeying road-signals etc.

Regularity then is a condition of personal security. Not all types of regularity contributes to social order and social security. For instance, gheraos and strikes may be organised to occur regularly at certain intervals of time, but the purpose in such cases is the break-down of security and order rather contributing to it. In other words, there could always be sporadic regular disorders. It is social order that involves regularity in respect of our environment.

The Legal Order is designed to meet these conditions, that is, it is required to maintain good living, to insure security etc., in society. So long as these conditions are fulfilled, our Legal Order contributes to social order. In general, it may be said that political thinkers have interpreted the founding of political authority in terms of

maintenance of conditions of peace and security.

Nowhere is this clearer than in the writings of Hobbes. Hobbes abhors insecurity and disorder, attributes it to the absence of a strong government and in his theory would gladly trade the former with the presence of a strong government.

If we keep before our mind the main features of civil disobedience as propounded in the 5th Chapter, that is, its non-violent character, the willingness of the civil disobedient to accept the punishment etc., it is clear that civil disobedient avoids disturbing order.

'Order' is also used in a weaker sense. As 'regularity' and 'order' were connected, 'irregularity' and 'disorder' are linked. 'Disorder' sometimes designates a state of affairs, when security isn't jeopardised. Very often non-regular occurrences do not pose a threat to our life, but they do cause disruption in our normal activities. For example, if in a class-room some students are whispering, joking, not attending to what the teacher is teaching, the class is disorderly though nobody's security is at stake. The civil disobedient also

poses no threat to the general security although the disturbance he creates by violation of law has much more serious character than in the class-room example. However, it is not the case that all cases of civil disobedience have disordering consequence of this type. Strikes may cause more inconvenience than many of the cases of civil disobedience will do. This may also happen because of a political leader's speech at a public place. This type of disorder may be caused as a result of protest or demonstration against some evil, involving or not involving violation of law. Whenever we want a better type of order through some protest, whether it is civil disobedience or any other type of protest does not matter, the former type of order is likely to be disturbed before it can be replaced by a better sort of order. This might require extra-police activities and the like to check the crowd of disobedients but the running of police here and there for maintaining law and order, will hardly be called a disorder, for every now and then they are running to capture dacoits, suppressing riots etc., This would not be a serious objection to civil disobedience if at this relatively

cheap price some worthwhile purpose is attained.

3. The relationship between 'law' and 'order' is contingent for,

(a) law could be disturbed with or without disturbance in order;

(b) law may itself cause disorder of a certain kind;

(c) order could be disturbed with or without disturbing the law.

Sometimes, the legal structure may itself contribute to social disorder as when government officials act in unlawful ways, as in the case of police brutality. Further, unjust laws create more disorder than order and so is the unjustified application of them.<sup>4</sup> Such conditions tend to foster counter-violence and retaliatory disorders out of revenge,

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4. We can make a distinction between a law being just and its unjust application. In this context, M.L. King writes: "There are some instances when a law is just on its face and unjust in its application. For instance, I was arrested...on a charge of parading without a permit...there is nothing wrong with an ordinance which requires a permit for a parade, but when the ordinance is used to preserve segregation and to deny citizens the...privilege of peaceful assembly and peaceful protest then it becomes unjust.", CDTP., p. 78.

frustration, etc. In other words, the contribution of laws to order is dependent on the content of the laws and their proper application. 'Law' and 'order' are often linked but it is a mistake to suppose that they must always go together. We can, in other words, disturb 'order' without disturbing 'law'.

In the 5th Chapter, civil disobedience was differentiated from 'rebellion', 'revolution' and other associated concepts. The proponents of the last two, intend to seek the overthrow of the constitutional authority or at least repudiate that authority in some sphere: civil disobedient does neither. He acts within the realm of established authority not outside it. He does not intend to replace the present legal system either by another sort of order or by the state of anarchy. On the contrary, civil disobedience presupposes the absence of a state of anarchy.

The most distinctive characteristic of anarchist theory according to its proponents is that it is the only modern social doctrine that unequivocally rejects the concept of the state with its evils of political power and authority. To reject political power is of course to reject the state. Peter Kropotkin, one of the famous anarchists, remarks:

All that was once looked on as a function of the Government is today called in question. Things are arranged more easily and more satisfactorily without the intervention of the State...We are led to conclude that the tendency of the human race is to reduce Government interference to zero; in fact to abolish the State, the personification of injustice, oppression and monopoly.<sup>5</sup>

Kropotkin asserts that the state is not only unnecessary but it is also an agent of injustice. The civil disobedient on the contrary does not hold a priori that state is an agent of injustice. It may become an agent of injustice as concerns some particular law, and in this case it is to be resisted. However, this does not rule out the possibility of a government as a whole becoming unjust.

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5. Kropotkin, P.: The Conquest of Bread, N.Y. 1968, p. 41.

However, if we recall our definition of civil disobedience<sup>6</sup> it will become clear that civil disobedience does not lead to anarchy, rather it presupposes a government, otherwise there would even be nothing like disobedience. In other words, civil disobedience is a protest against some specific law or policy of the government or authority which are considered unjust, but it is never a protest against the authority as such. The difference is fundamental. If the revolutionary is an anarchist like Karl Marx he would wish the state "to wither away" but if he is a revolutionary like Gandhi he would as a satyagrahi like to replace the present unjust government with a just one.

It is worth noticing that civil disobedient is not an anarchist. The decision to resist non-violently a certain law does not presuppose or imply that all laws ought to be resisted or that the existence

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6. The definition reads: Civil disobedience is a conscientious, illegal, public and non-violent act undertaken to bring about a change in what is considered to be an unjust law or policy of government. For details see Chapter 5.

of police force and government is unnecessary. Civil disobedience does not involve acting with disloyalty or rebellious intent. It might be said that civil disobedience tends to encourage anarchism, because respect for law might be endangered in the public even by an isolated act of disobedient resistance. Prima facie 'civil disobedience' and 'legal responsibility' seem opposites. The argument furnished is: To be legally responsible is to obey the law, whereas to be a civil disobedient is to violate the law. Therefore, 'civil disobedience' and 'legal responsibility' are mutually exclusive. But this rests on a mistaken notion of 'responsibility', the notion namely, that it is consistent only with absolute obedience to law.

However, if 'legal responsibility' implies the 'absolute obedience to law' then it also implies the absolutising of the existing laws. No system of laws however good and just it may appear to its supporters can claim infallibility and absolute immunity from need for a change. In actual practice the infallible laws remain in the realm of possibility only and we have to deal with laws which are patently unjust, discriminatory and detrimental to the public



good. Thus if it is clearly seen that laws are infallible, the need as well as desirability of evaluation of laws follows and the responsible citizen turns out not to be one who renders blind obedience to laws or to the state but one who stays vigilant as a watch-dog. Thoreau depicts the picture of blind lovers of law:

A common and natural result of an undue respect for law is, that you may see... all, marching...to the wars, against their common sense and conscience...What are they? Men at all?... (but) a mere shadow ...a man laid out alive...The mass of men serve the state thus, not as men mainly, but as machines, with their bodies...<sup>7</sup>

Ironically enough these men are treated as 'good citizens' whereas those who serve the state with their conscience and thus "resist it for the most part" are designated 'enemies'<sup>8</sup> (or bad citizens) by the state. We find a glaring example in Socrates.

The legally responsible citizen would be concerned with the preservation of law only to the extent that it is fair and sensitive to the needs of humanity. As such he may come across numerous occasions

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7. CDTP., p. 28-9.

8. *ibid.*

which demand from him judicious disobedience rather than automatic and unthinking obedience. In other words, without the constant scrutiny and criticism of existing laws, there cannot be true legal responsibility. One who blindly obeys laws regardless of their content cannot be said to be a truly responsible citizen. Further, unjust laws bring disorder to society, and to whatever extent civil disobedience is successful in eradicating or checking such forms of injustice, it brings about conditions for greater social, political and legal responsibility. Thus civil disobedient by thus improving the quality of laws, by creating respect for (good) laws and reforming the legal system, ensuring justice and security remains the legally responsible individual par excellence.

Besides, even when the civil disobedient is engaged in disobeying bad or unjust laws, he submits to arrest and punishment<sup>9</sup> and unlike robbers

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9. This acceptance of punishment is recommended by John Locke though demonstrated by the conduct of Socrates, Thoreau, Gandhi and King. However, if someone secretly violated the law or tried to evade or dodge it or violently tried to overthrow it, that would indeed be undermining the idea of law. As we have seen the civil disobedient does neither.

and thieves, never runs away from acceptance of punishment.' In so doing he further ensures that the respect for law is not unduly weakened.

If the fact of civil disobedient's disobeying law(s) sets any bad precedent for lawlessness, the fact of his willing and open acceptance of the punishment checks it effectively. However, an action could be said to set a bad precedent only when it is bad in and by itself. Whatever action we perform, it has certain goal or end and some means for its achievement or accomplishment are adopted. Consequently, some action could be characterised as 'bad' only when either the means adopted or the end contemplated is bad in essence. When neither of them is bad, the action can never properly be designated as 'bad'. We can apply this criterion in the case of civil disobedience. In this context, two things are to be noted:

1. Civil disobedient aims at the changing of some unjust law or policy of his government - which indeed is the goal; and
2. The means adopted to achieve this end are essentially non-violent, non-injuring and non-selfish.

In this case, the means adopted as well as the end contemplated is good.<sup>10</sup> The action as a whole is not bad and therefore it can never be said to set a bad precedent.

Finally, an argument against ever acting illegally goes like this: The reason why one ought never to disobey law is simply that the consequences would be disastrous if everybody disobeyed the law. The reason why disobedience is not pronounced to be a right conduct becomes apparent once we ask the question, "But what if everybody did that?" Such arguments are not uncommon yet as it stands, it is essentially a confused one. Here two questions are

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10. In general, political thought has ignored the central problem of means and ends. Karl Marx emphasised end so much so that he forgot everything about means. Machiavelli in his Prince also justified the latter on the ground of the former. In other words, if for them the end was good it might have been brought about by any means, fair or foul. Accordingly, a good end might even be brought about by bad means, which indeed is a paradoxical situation. It was Gandhi in contemporary times who turned the tables. His dynamic technique of satyagraha suggested a re-examination of ends-means relationship. For further details see the Chapter on Gandhi.

involved: (a) Will my act of disobedience in some way influence others to engage in similar acts in similar situations? (b) What would happen if everyone did the same act in similar circumstances? The first which relates to the consequences of an act of civil disobedience concerns the relationship between my act of disobedience and others' act of disobedience. The second however concentrates on the principle that a protagonist of civil disobedience has. As concerns the first argument, it is true to say that any act of any sort will have some consequences. Civil disobedience is not immune to such a possibility. However, what the actual consequences of an act are is a matter of empirical investigation. On the other hand, as we have seen above, the civil disobedient does not propound an overthrow or dissolution of the state. In other words, any one who says that there are times when actions may be justified is not thereby propounding a general theory that it is morally right to disobey all laws.

The maxim of civil disobedient is not indiscriminate disobedience but discriminate disobedience. Putting it differently, there seems to be no

inconsistency in opposing indiscriminate disobedience and defending discriminate disobedience. Endorsing such a distinction Richard Wasserstrom writes:

It is surely not inconsistent to assert both that indiscriminate disobedience is indefensible and that discriminate disobedience is morally right and proper conduct.<sup>11</sup>

Anyone who disobeys an unjust law does not thereby assert that all laws ought to be disobeyed or that just laws ought to be disobeyed. In such a situation what one asserts is that a man of conscience ought to disobey an unjust law. When the illegality of civil disobedience is stressed the objection is posed: "What if everyone disobeyed the law?" But a victory is too easily gained if it is implied that lawlessness is generalised. Civil disobedience is not only an illegal act but an illegal act with certain other qualifications. It is done in a public manner, non-violently and requires purity of motives etc.

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11. Wasserstrom, R.: "The Obligation to Obey the Law" published CDTP... p. 258.

It is a protest to fight an immoral or unjust law. If everyone were to act on this principle and wage a war against wrong in the manner prescribed by the civil disobedient it will greatly benefit the society. In the previous pages it was shown that the civil disobedient intends to bring a better sort of order and may be regarded as a par excellence responsible individual. Our analysis in this Chapter has further substantiated this observation of ours.

## CHAPTER VIII

### CONCLUSION

In the preceding Chapters, we had been engaged in the philosophical questions concerning civil disobedience, which were raised in the Introduction. The works of Plato, Locke, Thoreau and Gandhi provided us with a valuable material from which we drew support for our analysis. It remains now for us to recapture some of the salient features of theory and practice of civil disobedience which our study has yielded. The first thing that this study brings to our attention is that it is essential to understand the fact that the civil disobedient is a person who confronts a situation of conflict of obligations. While discussing Socrates, we made a distinction between 'higher' and 'lower' values. The former type of values may emanate from a Conscience, Reason or Voice of God. The latter type of values are considered necessary but they are not the only



values worthy of our pursuit. For life which we consider noble and worth living the former type of values are a 'must'. These two types of values depict two aspects of an individual's life, viz., one which may be called his spiritual/moral aspect and the other the political aspect. Depending on these values the individual confronts two types of obligations: the higher obligation which flows from spiritual/moral aspect and the lower obligation which is the same as political obligation. In the case of conflict, his conscience (Reason or what he believes to be the command of God) dictates him to do 'x' whereas the empirical law obliges him to do 'not-x'. The individual as a moral man and as a beneficiary of the laws of the State cannot neglect either. As a spiritual/moral man he is obliged to follow the call of conscience etc., as a citizen he feels obliged to obey the laws. In this peculiar situation he follows the command of Conscience as has been witnessed in our discussions of the four positions, though as a law-abiding citizen he accepts the punishment. That such a dissenter should accept the

punishment peacefully for his act of disobedience is endorsed by the practical demonstrations in cases of Socrates, Thoreau and Gandhi. Locke being a theoretician did not disobey law himself and therefore the question of undergoing punishment did not arise in his case. But he did plead for acceptance of punishment once the conscientious citizen disobeyed the law. As a civil disobedient recognises the validity and place of state and obligation to the state, he does not wish to do anything which may jeopardize the law and order in the state. Thus he does his act in public rather than stealthily and accepts the punishment willingly. This fact about the civil disobedient, viz., that he basically recognises the value of the government, and of the law and order it maintains but protests only to redress specific laws which he considers unjust or immoral, sets him apart not only from the ordinary outlaws, but also from the anarchist who rejects state in toto and even the revolutionary who rejects the validity of the particular regime as a whole. We must emphasise that the civil disobedient accepts the validity of the

gôvernment as a whole but is engaged in protest against some specific laws or policies of it. This difference from the aims and spirit of an anarchist and revolutionary explains his adherence to basically peaceful methods of protest - this feature reaching its highest point in Gandhi. Gandhi nevertheless linked it to the peculiar religio-spiritual view of the world he had and to the pursuit of Truth which he considered to be his highest goal. However, it is clear from our study, that even without the presupposition of such a religio-spiritual world view, peaceful methods and non-violence deserve to be considered as essential to civil disobedience peaceful methods alone are appropriate. That is so from the point of view of consistency with the spirit of such acts, as well as the effectiveness in achieving the desired goal of changing laws and policies by rousing the conscience of the people as well as that of the government.

Thus we found that civil disobedience is best understood as a conscientious, illegal, public,

and non-violent act undertake to bring about a change in what is considered to be an unjust law or policy of the government.

On the question of justification we found that to reject civil disobedience as always unjustifiable, would be tantamount to taking an extreme view of the absolute morality, justice and infallibility of the government and its procedures. Nor is there anything in the nature of political obligation which compels one to take such an absolute view of the sanctity of laws. Our examination also revealed that the charges brought against justification of civil disobedience on the ground that it leads to disrespect for law and may even lead to anarchy cannot be proved. In the light of our analysis of civil disobedience, its spirit and the situation which the civil disobedient faces, such objections are seen to originate only from a confused and shallow understanding of such concepts as 'obligation', 'law' and 'order', not to mention 'civil disobedience' itself. Acceptance of such an argument will have the consequence of recommending tyrannies, dictator-

ships and thoroughly corrupt and degenerate governments which can hardly be acceptable to a conscientious and just man. In fact a thorough examination of the situation reveals that not only civil disobedience does not lead to such undesirable results, but in fact it is likely to have effects which are beneficial to all concerned. The civil disobedient does not disobey all laws as is clear from our understanding of Socrates, Locke, Thoreau and Gandhi. He disobeys only those laws which he considers unjust or immoral and aims at redressing them. He tries to eliminate injustice from the society of which he is a member. Thus he aims at reforming the existing system of laws and tries to bring about a better sort of law and order. In this sense he proves to be a good citizen. A good citizen is not one who blindly follows law, but one who at times disobeys law to refine it in order that it may bring about a better sort of order and justice in society. By his vigilance and courage, the civil disobedient keeps the moral tenor of the state high and saves it from degeneration. In a typical civil disobedience

situation the agent finds himself in conflicting claims of obedience to laws (a general expectation from a citizen) and a conscientious disobedience in case of such laws and policies which violate the principle of fair-play or disregard public good. Thus in engaging in civil disobedience he may in fact be acting from a highly developed sense of duty to the state and the people. His is the difficult but highly valuable task of raising a voice and rousing public conscience against laws and policies which are patently unjust and discriminating, bearing the stamp of corruption and self-aggrandisement of the ruling clique. Their merely having the certificate of technical legality does not entirely cover the ugly reality underneath.

It emerges then from this study that the civil disobedient and the satyagrahi are highly valuable possessions of the society, a fact which is ordinarily not recognized. It seems to us that even though they render invaluable service to the state and society at large, ironically they are objects of suspicion and vehement criticism both at

the hands of the 'patriotic' common man and the government. But such matters are beyond the scope of this study. It is only appropriate, therefore for us to stop at this point.

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## List of Abbreviations

- APSR.     The American Political Science Review.
- AUTO.     An Autobiography or the Story of My  
              Experiments with Truth, trans. Mahadev Desai.
- CDTP.     Civil Disobedience: Theory and Practice,  
              edited by H.A. Bedau.
- IJE.       International Journal of Ethics.
- JOP.       The Journal of Philosophy.
- JVI.       The Journal of Value Inquiry.
- ASP.       Aristotelian Society Proceedings.
- ROM.       The Review of Metaphysics.